

**State of Minnesota
In Supreme Court**

**OFFICE OF
APPELLATE COURTS**

MINNESOTA VOTERS ALLIANCE and DIANE NAPPER,

Petitioners,

v.

CITY OF MINNEAPOLIS and CASEY CARL, in his official capacity as City Clerk
of the City of Minneapolis,

Respondents.

REPLY BRIEF OF PETITIONERS

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The Election Law unambiguously requires party-balanced pairs of election judges at early voting sites. Even if it were ambiguous on this question, the statutory factors show that the Legislature intended to require election judges at early voting sites. The Court should so hold.

I. The Court Has Jurisdiction.

Initially, Respondents are mistaken to challenge the Court's jurisdiction under Minn. Stat. §204B.44, because the Petition plainly asks the Court to correct a "wrongful act, omission, or error of [an] individual charged with any duty concerning an election."

This Court has clarified that, since section 204B.44 allows correction of errors "concerning an election," it does not provide jurisdiction over challenges that "only generally implicate elections," *Begin v. Ritchie*, 836 N.W.2d 545, 548 (Minn. 2013), or that have only a "tangential" connection to elections. *Carlson v. Ritchie*, 830 N.W.2d 887, 894 (Minn. 2013). Instead, "the statute requires that the claim relate to a duty concerning a specific election," and the petition must "request ... relief specific to that election," *Minn. Majority v. Ritchie*, No. A09-950, 2009 Minn. LEXIS 976, at *8 (July 22, 2009). So a section 204B.44 petitioner must seek to enforce the respondents' "duties in the context of a specific election or the ballot to be used at a specific election." *Begin*, 836 N.W.2d at 549.

This Petition readily meets that standard. Petitioners ask the Court to direct Respondents how to perform specific tasks that are integral parts of administering one specific election (the 2026 general election). That is exactly what the statute requires.

Respondents seem to suggest that section 204B.44 petitions must allege an error or omission affecting *only* one particular election, one that will not recur in future elections. That would make little sense: why should the Court be disabled from correcting an error about an election just because similar errors might recur later? It also would badly conflict with this Court’s settled practice. The Court regularly exercises section 204B.44 jurisdiction to decide legal questions that apply both to the election before it and to future elections. In the past two decades, the Court has decided the following issues under section 204B.44:

- Whether “Minnesota Statutes ... which authorize major political party to determine the candidates that will appear on its ballot for the presidential nomination primary, violate ... the United States Constitution.” *Binkley for President 2024 v. Simon*, 7 N.W.3d 400, 401 (Minn. 2024) *see De La Fuente v. Simon*, 940 N.W.2d 477, 482 (Minn. 2020) (deciding different constitutional challenge to similar procedures).
- Whether a “candidate for judicial office [must] be licensed to practice law in Minnesota.” *MacDonald v. Simon*, 12 N.W.3d 445, 447 (Minn. 2024).
- “[W]ether manifestly unconstitutional language in a proposed city-charter amendment can be severed and the remaining language placed on the ballot.” *Kranz v. City of Bloomington*, 990 N.W.2d 695, 696 (Minn. 2023).
- Whether the Secretary of State may “provide[] titles for ... ballot questions different from those passed by the Legislature.” *Limmer v. Ritchie*, 819 N.W.2d 622, 624 (Minn. 2012).
- Whether “any nominating-petition requirement in general, and the requirement that a candidate present a petition bearing at least 500 signatures with valid residence addresses in particular[,] are unconstitutionally burdensome.” *Beaulieu v. Mack*, 788

N.W.2d 892, 894 (Minn. 2010).

- Whether “a judge appointed by the governor to fill a judicial vacancy is barred from running for election to retain the office.” *Clark v. Pawlenty*, 755 N.W.2d 293, 298 (Minn. 2008).

Indeed, the Court has exercised section 204B.44 jurisdiction to address statewide questions about election judges specifically. Recently, the Court decided whether “the statutory requirements for election judges ... also apply to deputy county auditors” who serve on absentee ballot boards. *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269, 273 (Minn. 2022). Previously, the Court decided under section 204B.44 whether “no more than half of the election judges in any one precinct [may be] affiliated with the same political party.” *Republican Party v. O’Connor*, 712 N.W.2d 175, 175 (Minn. 2004). These decisions addressed “dut[ies] related to an election,” within the meaning of section 204B.44, because they directly decided which municipal employees are allowed to actually administer voting in the particular elections at hand. This Petition involves duties related to the upcoming election in exactly the same way.

By contrast, this case bears little resemblance to ones where the Court has rejected or questioned jurisdiction under section 204B.44. Those petitions alleged errors or omissions that involved the electoral process generally, but did not directly relate to the administration of any particular election—things like certifying a political party, *Begin*, 836 N.W.2d at 546, or updating the statewide voter-registration database, *Minn. Majority*, 2009 Minn. LEXIS 976 at *1; *Minn. Voters All. v. Simon*, 885 N.W.2d at 663-64, or demanding that the lower courts accept filings in election-related litigation. *Carlson*, 830 N.W.2d at 894. This case is different. Petitioners do not allege an error with some sec-

ondary effect on elections, but errors in the direct, immediate administration of one particular upcoming election. Specifically, Petitioners allege that (1) legally unauthorized personnel are about to administer voter-eligibility challenges, voter-registration vouching, ballot-marking assistance, and curbside voting, and (2) Respondents will operate polling places without the legally required personnel. Those claims easily satisfy section 204B.44.

Respondents try to make a partial argument from the statutory structure of section 204B.44, but it is manifestly mistaken. Respondents suggest (Resp'ts' Br. at 19-20) that section 204B.44(4)'s general grant of jurisdiction to correct "any wrongful act, omission, or error ... concerning an election" must be construed extremely narrowly, so as not to embrace the narrower grants of jurisdiction that the statute lists above it. But Respondents do not propose any plausible meaning for section 204B.44(4) that would be narrow enough to satisfy this demand. This is because they have failed to recognize the directly applicable canon of construction: "statutes are commonly constructed to include specific items followed by a general catch-all term intended to capture the same kind or class of items as those specifically identified." *State v. Khalil*, 956 N.W.2d 627, 638-39 (Minn. 2021). "The principle underlying" this "rule of *ejusdem generis* is that the legislature had in mind things of the same kind and was speaking of them as a class." *State v. Sanschagrin*, 952 N.W.2d 620, 627 (Minn. 2020) (cleaned up). So one would not expect a final catch-all provision like section 204B.44(4) to somehow exclude the preceding specific provisions.

*

If the Court wishes to articulate a general standard for assessing section 204B.44 jurisdiction, we suggest the following: jurisdiction exists when petitioners allege an error or omission in the actual, direct administration of voting or ballot counting, and ask the courts to order respondents to correct that error for a particular election. While there may be other circumstances in which section 204B.44 jurisdiction arises, the Court need not explore them here, because this Petition readily meets that simple standard.

II. The Election Law Unambiguously Requires Election Judges at Early-Voting Polling Places.

On the merits, as our principal brief explained, the Election Law is crystal clear that (1) many voting-related tasks must generally be performed by election judges or party-balanced pairs of election judges, (2) these general requirements apply to early voting unless the early-voting law provides otherwise, and (3) the early-voting law reassigns some but not all of election judges' tasks to "early voting officials." The unambiguous result: some tasks regarding early voting still must be performed by election judges or party-balanced pairs of election judges, who therefore must be present at early-voting polling places.

Respondents and the Secretary can find no persuasive counterargument in the statute. The Secretary contends that "chapter 204C's requirements for election day voting" do not apply *at all* to "early voting," because the early-voting law "comprehensively" details what must be done "to effectuate early voting," so it is not appropriate "to graft election-day procedural requirements," including those involving election judges, "into the early voting procedures." (Secretary's Br. at 6-9, *see id.* at 11.) Since nothing in section 203B.30 requires election judges, says the Secretary, they are not needed for early voting.

But as we explain next, every part of this argument contradicts what the statute actually says.

A. The Early Voting Law Expressly Incorporates the Rest of the Election Law.

Start with the Secretary's attempt to exempt early voting wholesale from Chapter 204C. The statute expressly says exactly the opposite: "**The Minnesota Election Law is applicable to** voting by absentee ballot and **early voting** unless otherwise provided in this chapter," Minn. Stat. §203B.001, and "the 'Minnesota Election Law' includes chapter '204C.'" Minn. Stat. §200.01. The Legislature specified this in the same Act that created the modern early-voting procedures themselves. *See* 2023 Minn. L. Ch. 62, art. 4, §§29 (Election Law applies to early voting), 68 (creating early-voting procedures). So it is quite remarkable that neither the Secretary nor Respondents even acknowledge, let alone grapple with, this express statutory direction. It definitively refutes the Secretary's effort to portray early voting as a "comprehensive[]" stand-alone procedure, governed only by Chapter 203B.

Comparing the text of the early-voting law with Chapter 204C only confirms this. There are several important provisions found only in Chapter 204C, not in the early-voting statute, that the Legislature could not plausibly have meant to omit from the early-voting scheme. For instance, immediately before and after the "voter assistance" provisions that the Secretary says do not apply to early voting, Chapter 204C creates criminal prohibitions on fraudulently obtaining ballots, on voting multiple times in the same election, and on marking someone else's ballot. Minn. Stat. §§204C.14, .16. Another provision of Chapter 204C criminalizes fraudulent or corrupt actions by election officials.

Minn. Stat. §204C.41. Elsewhere, Chapter 204C allows people who cannot write to cast votes, Minn. Stat. §204C.02, prohibits fraud regarding the time, place, or manner of voting, Minn. Stat. §204C.035, limits who may enter or loiter in a polling place, Minn. Stat. §204C.06, subd. 2, prohibits removing election materials from the polling place, *id.*, subd. 4, creates the rules governing challengers at polling places, Minn. Stat. §204C.07, prohibits opening the ballot box during voting hours, Minn. Stat. §204C.08, subd. 3, and prohibits marking early-voting ballots as a means of identification. Minn. Stat. §204C.18, subd. 2.

By contrast, neither the early-voting law, nor Chapter 203B where it is codified, re-states any of these requirements or prohibitions, or creates any substitutes for them.¹ We cannot imagine that the Secretary believes that early voting is somehow exempt from these prohibitions on fraudulent election conduct—but that is what his argument would require. This is mistaken because the Legislature specified that the rest of the Election Law, including Chapter 204C, **does** apply to early voting. Minn. Stat. §§200.01; 203B.001.

The Secretary's only real counterpoint rests on Chapter 204C's title, which is "election day procedures." From this, the Secretary seeks to infer that Chapter 204C itself disclaims any effect before election day—and so section 203B.001's application of it to early voting simply has no effect. But that is implausible at best. "The headnotes printed in boldface type before sections and subdivisions in editions of Minnesota Statutes are mere catchwords to in-

¹ Minn. Stat. §203B.03 prohibits certain fraudulent actions, but it applies mostly to absentee ballots, not early voting.

dicade the contents of the section or subdivision and are not part of the statute.” Minn. Stat. §645.49. And that is certainly true here. Chapter 204C contains many provisions that expressly apply well before and after Election Day. For instance, section 204C.035, subd. 1 prohibits fraudulently misrepresenting the time, place, or manner of voting. Similarly, section 204C.18, subd. 2 prohibits placing “a means of identification” on a ballot “**at any time.**” And many provisions of Chapter 204C expressly require canvassing board activities and recounts to occur well *after* Election Day. *See* Minn. Stat. §204C.32-.40.

Likewise, many of Chapter 204C’s requirements for election judges say nothing to limit themselves to Election Day. Section 204C.12 provides in-person procedures requiring election judges to resolve challenges to voter eligibility. By its terms, section 204C.12 requires election judges to resolve any challenge to a voter’s eligibility in a polling place; it does not specify any time when it does or does not apply. Similarly, the terms of section 204C.15 require party-balanced pairs of election judges to help mark ballots or conduct curbside voting whenever a polling place is open, with no other time limitation.

Indeed, the Secretary recognizes that these election-judge provisions have *some* application to early voting. He “agrees that, if” early voting sites offer ballot-marking assistance and curbside voting, “they must be performed by election judges.” (Secretary’s Br. at 11.) But, so far as we are aware, the only place where Minnesota law authorizes or regulates these services is Chapter 204C. So this requirement for early voting can come only from Chapter 204C.

In sum, nothing supports the Secretary’s attempt to make Minn. Stat. §203B.30 into an exhaustive early-voting code, and to turn Chapter 204C into

a sort of optional add-on to early voting. The early-voting law expressly incorporates the Election Law—including Chapter 204C and its requirements for party-balanced pairs of election judges.

B. The Early-Voting Law Expressly Incorporates Specific Procedures Requiring Election Judges.

Even if the early-voting law contained exclusive, comprehensive directions for early voting—which it does not, as just explained—Respondents and the Secretary still would be wrong to contend that those directions do not require election judges. To the contrary, the early-voting law expressly incorporates procedures that *do* require election judges.

As our principal brief explained, although the early-voting law is only a few hundred words long, it cross-references not one but two other provisions that expressly require election judges. First, if an early “voter’s status is challenged, the voter may resolve the challenge as provided in section 204C.12.” Minn. Stat. §203B.30, subd. 2(a). And section 204C.12 expressly requires that *election judges* elicit sworn testimony as to the voter’s eligibility, and decide that eligibility pursuant to law. Second, before voting early, “[a]n individual who is not registered to vote must register and a voter whose name or address has changed must update the voter’s registration in the manner provided in section 201.061, subdivision 3.” Minn. Stat. §203B.30, subd. 2(a). And again, section 201.061, subd. 3(a)(4) expressly gives voters the right to register through vouching *to an election judge*.

It is strange, then, for Respondents to insist (Resp’ts’ Br. at 26) that “[i]f the Legislature had intended for anyone other than the early voting officials to conduct early voting related tasks, it could have said so,” and for the Secretary

similarly to protest (Secretary's Br. at 8) that section 203B.30 does not require election judges. The Legislature *did* say so: section 203B.30 expressly references statutes that expressly require election judges.²

The Secretary implausibly contends (Secretary's Br. at 10) that section 203B.30 refers only to the *actions* (challenge resolution and vouching) that the cross-referenced statutes require, and not to the *personnel* (election judges) who the cross-referenced statutes require to conduct them. This is implausible. Ordinarily, procedural requirements specify *both* who must do something *and* how it must be done. For instance, if the Legislature passed a piece of legislation and the Attorney General purported to sign it into law, no one would say that a statute had been enacted "as provided" or "in the manner provided by" the Constitution. To allow that, the voters would have to amend the Constitution—perhaps to say that "the Attorney General may approve legislation in the manner provided by Art. IV, Sect. 23."

In fact, the Legislature used language just like this elsewhere in section 203B.30: it expressly authorized early voting officials to use other procedures that other statutes specify for election judges. As the Secretary notes, a recent amendment to section 203B.30 expressly instructs that, at the end of an early-voting day, "**the early voting officials** must" verify the total number of bal-

² It is a red herring for Respondents and the Secretary to observe that not *all* early voting officials need to be election judges. (See Resp'ts' Br. at 24; Secretary's Br. at 8-9.) That is true but irrelevant: Petitioners do not contend that all early voting officials must be election judges, only that *some* election judges must be present for early voting.

lots cast “using the procedures in section 204C.20, subdivisions 1 to 4.” See H.F. No. 4240, 94th Legislature, Reg. Sess. (Minn. 2026) (enacted), signed May 18, 2026 (emphasis added). Section 204C.20, in turn, instructs how “election judges” must verify ballot numbers. Similarly, section 203B.30, subd. 2(b) provides that after an early-voting ballot is cast, “[t]he **early voting official** must immediately record that the voter has voted in the manner provided in section 203B.121, subdivision 3” (emphasis added)—and section 203B.121 specifies that ballot recording must be done by county auditors, municipal clerks, ballot boards, or election judges, depending on the circumstances. So the Secretary is correct (Secretary’s Br. at 8-9) that this language in section 203B.30 indicates that “the legislature intended to permit non-election judges to perform polling place activities that are reserved to election judges on election day.” But what he misses is that when the Legislature intended that, it **said** that by specifically telling early voting officials to take over a particular task. It did not say that with respect to the duties of election judges that Petitioners invoke here.

Respondents and the Secretary are left, then, with the same countertextual gloss that they started with. They ask the Court to infer that, since the Legislature authorized early voting officials to do *some* things during early voting that elections judges do on Election Day, it must also have given early voting officials general permission to do *everything* during early voting that election judges do on Election Day. The problem is that the early-voting law simply does not say that—and this Court “will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently.” *Reiter v. Kiff-*

meyer, 721 N.W.2d 908, 911 (Minn. 2006) (citation omitted). In other words, where this Court’s precedents require applying the canon *expressio unius est exclusio alterius*, Respondents and the Secretary are arguing for the opposite—for a principle of *inclusio alterius* that finds no footing in the law. The only proper reading of the statute goes the other way: because the Legislature specifically authorized early voting officials to take over some tasks of election judges but not others, it unambiguously did **not** authorize a total displacement of election judges by early voting officials.

III. Election Judges Are Required Even If the Statute Is Ambiguous.

Nothing more is needed to decide this case. The Election Law unambiguously requires a party-balanced pair of election judges at each early-voting polling place. But even if the statute were somehow ambiguous on this question, its object, circumstances, consequences, and the like, *see* Minn. Stat. §645.16, tell in favor of Petitioners’ interpretation. Respondents and the Secretary rely on statements made only to an eleven-legislator committee,³ regarding a different bill, on a matter that even members of that committee seemed to disagree about. This cannot outweigh the contextual factors favoring Petitioners.

A. The Purpose and Effects of the Statute Strongly Favor Requiring Election Judges.

The parties seem largely to agree on the “occasion and necessity for the [early voting] law,” on the relevant “circumstances under which it was enacted,” on the “mischief to be remedied,” and on “the object to be attained.” *See*

³ *Elections Finance and Policy Meeting Minutes*, Minnesota 93rd Legis., <https://www.house.mn.gov/committees/minutes/93007/100492> (Mar. 29, 2023).

Minn. Stat. §645.16 (1)-(4). The Legislature sought to create an early-voting experience that feels like Election Day and is secure and fair like Election Day but that does not excessively burden the local governments who administer it. This is why the Legislature incorporated many Election-Day-like elements into early voting, while also providing that some of them can be implemented by early voting officials rather than election judges.

But the parties disagree about “the consequences of [each] particular interpretation” that they offer. *See* Minn. Stat. §645.16(6). Respondents and the Secretary seem oblivious to the risk of improper partisanship and erosion of public confidence that their interpretation of the early-voting law would invite. Conversely, they significantly overstate the administrative burden of staffing two election judges at early-voting sites.

1. Requiring election judges for Election Day but not early voting would be incongruous and create significant risks.

As we have described, Minnesota law requires that polling places be administered by election judges who are bipartisan, who meet certain qualifications, and who receive required training. (Pet’rs’ Principal Br. at 3-4.) There are strong and obvious reasons for this: it creates checks and balances that make it much harder for unfair partisanship to creep into election administration. Although many city clerks and county auditors would undertake their election duties in good faith even without any state-imposed requirements or qualifications for who they could hire as election staff, it would be naïve to ignore the real chance that some would not. County auditors are themselves elected officials, *see* Minn. Stat. §384.01, and city clerks ordinarily are ap-

pointed by elected officials. If they could staff early voting exclusively with their political allies, that could easily breed a spirit of improper partisanship in election administration.

The Legislature addressed this risk by creating party-balanced appointment requirements and qualifications for election judges. Indeed, the Legislature took care to create the *strongest* bipartisanship checks and balances in the most sensitive situations, such as when election judges physically mark ballots or carry them out of the polling place. And the Legislature believes in these checks and balances strongly enough that, for Election Day, it requires Minnesota counties and municipalities to hire and staff many thousands of election judges in voting precincts statewide.

For early-voting polling places, with their anticipated lower voter traffic, it makes sense that the Legislature would lessen the administrative burden by relaxing these checks and balances to a degree, as Petitioner's interpretation would do. Petitioners' interpretation would ensure that each early-voting polling place is staffed by one election judge from each party, while giving city clerks and county auditors flexibility with respect to additional staffing.

By contrast, Respondents' and the Secretary's view of the law makes much less sense. On their interpretation, the Legislature completely *abandoned* these checks and balances for early voting. They contend that state law imposes no restrictions at all on who city clerks and county auditors can hire and assign to staff early-voting polling places. This would create a stark incongruity between Election Day voting and early voting. On Election Day, the Legislature guards against improper partisanship by requiring cities and counties

to follow carefully wrought staffing safeguards for election judges. But for the millions of ballots cast during early voting, Respondents and the Secretary think that the Legislature adopted an “anything goes” attitude—that no checks or balances against partisan administration were necessary at all.

There is no plausible reason why the Legislature would have intended that strange mismatch. There is no structural difference between early voting and Election Day that makes the former pose less risk of partisanship or impropriety in administration—if anything, the relative informality and lower profile of early voting would seem to create a *greater* risk.

Respondents and the Secretary suggest that staffing election judges for early voting would be extremely burdensome or even impossible, so the Legislature simply had no choice but to forego them completely. But as we explain next, that contention is greatly exaggerated and cannot explain why the Legislature would have abandoned election judges for early voting.

2. The burden of including election judges in early voting is comparatively quite small.

As we have explained (Pet’rs’ Principal Br. at 10), Minneapolis currently hires nearly 1,000 election judges from each party for Election Day alone. Staffing *all* of the City’s early-voting polling places with party-balanced election judges would require fewer than 60 additional staff-days from each party’s election judges—and because early voting is spread over 18 days, all of these hours could be completely filled by as few as **four** individuals from each party. (*Id.* at 30-31.) In smaller jurisdictions, the burden would be even less. And of course, since early voting does not occur on Election Day, every one of the 1,000 election judges that Minneapolis hires from each party for Election Day would

potentially be available to fill one of that small number of early-voting slots (and could receive paid time off from their regular job to do so). (*Id.*)

On top of that, it bears emphasis that even this small number of election judges would not be net new hires for Minneapolis. Even under the Respondents' and the Secretary's interpretation of the early-voting law, Minneapolis still must hire a significant number of "Seasonal Election Support Specialists" (see Cilek Decl. 6 & Ex.A) to serve as early voting officials. As a result, staffing two election judges at each early-voting polling place would not require Minneapolis to increase its total staff count by even a single person. It simply would need to hire qualified election judges for positions that it would otherwise have filled with "Seasonal Election Support Specialists."

The result is that the difference in burden or difficulty between the parties' interpretations of the statute is much, much smaller than Respondents and the Secretary contend. Petitioners simply ask that Minneapolis fill a small number of positions with qualified election judges—likely from the pool of almost 2,000 that it already is hiring for Election Day—while Respondents and the Secretary contend that the City can hire early voting officials for those same positions instead. Since there are statutory qualifications for election judges, presumably Petitioners' interpretation will require *some* additional administrative effort. But for Respondents and the Secretary to describe the undertaking as "unprecedented" (Resp'ts' Br. at 35) and potentially "impossible" (Secretary's Br. at 14) is a gross exaggeration at best.

For similar reasons, there is no basis in reality for the Secretary's suggestion (see Secretary's Br. at 14-15) that election judges would have little to

do at early-voting polling places. The Secretary contends that, because there are relatively few tasks that *only* election judges may perform during early voting, it “is a significant imposition” and “inefficient” to require them to be present for early voting. (*Id.* at 15.) But he overlooks that election judges can perform *any* task assigned to early voting officials. Minn. Stat. §203B.30, subd. 1. As a result, election judges at early-voting sites would perform all the same work as the “Seasonal Election Specialists” that Minneapolis intends to hire instead.

Although the Secretary hints at other “logistical concerns” with Petitioners’ interpretation (Secretary’s Br. at 16), these too are obviously insubstantial. The Secretary asks, for instance, how the statutory “process and timeline for hiring election judges” would “work for early voting locations.” (*Id.*) But the statutory process and timeline are facially compatible with early voting: the Secretary provides lists of potential election judges to county auditors by May 15 of each election year, and auditors and city clerks must hire election judges by 25 days before Election Day, well before early voting begins. Minn Stat. §204B.21, subds. 1-2.⁴

⁴ Perhaps the Secretary is concerned that city clerks need to hire election judges for each precinct on Election Day but will need to hire early voting-election judges for a centralized polling place at the county auditor’s office. There is no logistical problem there either, though: by statute, the Secretary’s lists of potential election judges must indicate “the names of individuals residing outside of [each] jurisdiction who indicated a willingness to travel to that jurisdiction to act as an election judge.” Minn Stat. §204B.21, subd. 1. So anyone, from any precinct, who indicates willingness to travel to or within Minneapolis could serve as an election judge at any early-voting location in the City.

The Secretary's next purported "logistical concern[]" (Secretary's Br. at 16) is "whether [§204B.21]'s requirement for party balance would generally apply" to early voting, "or only when election judges are performing the tasks that explicitly require party balance." Section 204B.21, subd. 2 requires that "[a]t least two election judges in each precinct must be affiliated with different major political parties." This requirement for precincts seems unlikely to apply to early voting at a centralized site, like a county auditor's office, that accepts ballots from many precincts. But even if it does apply, staffing a party-balanced pair of election judges at an early-voting site obviously would satisfy this requirement as well. No logistical problem would arise.⁵

The Secretary's last "logistical concern[]" (Secretary's Br. at 16) is "how jurisdictions should respond if they cannot find enough election judges for the entire eighteen-day period." Apparently, the Secretary is implying that the Legislature must not have meant to require election judges at early voting because it did not provide a contingency plan for what to do if the required judges cannot be found. That is roundly refuted by the Election Law's requirement for election judges on Election Day. We are not aware of any authority addressing what should happen if Election Day arrived and there simply were no election

⁵ Although he did not say so, perhaps the Secretary meant to refer to the party-balance requirement of Minn. Stat. §204B.19, subd. 5, which requires that "no more than half of the election judges in a precinct, or at any location where ballots are being counted, may be members of the same major political party." Again this requirement for precincts would not seem to apply to countywide early-voting sites—but if it does, it could be satisfied simply by staffing the early-voting site appropriately, in the same manner that city clerks and county auditors already must do for each precinct on Election Day.

judges available to work in a particular precinct. That plainly did not stop the Legislature from requiring election judges on Election Day. So it is no reason why the Legislature would not have done the same for early voting.

B. Section 203B.30's Legislative History Is Not to the Contrary.

Legislative history does not change this conclusion. If the statutory text is clear, legislative history is not relevant at all: this Court does not use “legislative history [to] create, rather than eliminate, ambiguity,” and so “[w]hen a statute is clearly worded,” the Court “generally do[es] not consider legislative history.” *Hutchinson Tech., Inc. v. Comm'r of Revenue*, 698 N.W.2d 1, 8 (Minn. 2005). But even if the Court finds the statute ambiguous, the particular legislative history that Respondents and the Secretary rely on here is only weak evidence of legislative intent, for several reasons we explain below. It cannot overcome the contextual indications that the Legislature did not intend to abandon election judges only for early voting.

When the courts consider legislative history, they recognize that some forms are weightier than others. The U.S. Supreme Court has described “Committee Reports on the bill” as the most “authoritative” form of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984). This Court has added that “[s]tatements made ... by the sponsor of a bill ... are generally entitled to some weight.” *Handle with Care, Inc. v. Dep’t of Human Servs.*, 406 N.W.2d 518, 522 (Minn. 1987). By contrast, “statements made in committee discussion or floor debate are to be treated with caution,” *id.*—as is “testimony before committee hearings,” *Dawson Chem. Co. v. Rohm & Haas Co.*, 448 U.S. 176, 224 (1980)—because only a few legislators (in only one house) are likely to hear them. This

makes them unreliable guides in finding “[t]he legislature’s intent” overall, which “is not necessarily the same as[] the collective understandings of the individual members.” *Handle with Care, Inc.*, 406 N.W.2d at 522; *accord, e.g., State v. Leek*, 614 P.2d 209, 213 (Wash. 1980) (“speeches of individual members” show very little about overall legislative intent, because “[t]hose who did not speak may not have agreed with those who did” (citation omitted)). Similarly, as this Court made clear in a related context, special “caution” is needed in considering statements by “opponents to the bill, since they tend to overstate its reach in their zeal to defeat it.” *Res. Mining Co. v. State*, 310 N.W.2d 487, 491-92 (Minn. 1981) (citation omitted). Put differently, “statements ... by opponents of the legislation” carry “little, if any, weight,” *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 855 n.15 (1984) (citation omitted), because “[a]n unsuccessful minority cannot put words into the mouths of the majority and thus, indirectly, amend a bill.” *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 288 (1956).

1. Respondents’ and the Secretary’s contemporaneous legislative history is of little weight.

Here, the legislative history offered by Respondents and the Secretary falls at or near the bottom of this hierarchy. (See Resp’ts’ Br. at 10; Secretary’s Br. at 13-14.) They point to committee testimony and discussion not about the bill that became the early-voting law itself, but about an earlier, different elections bill. The main provisions of that bill were a significant increase in appropriations for the Secretary of State’s office. See H.F. 1723, 93rd Legislature, Reg. Sess. (Minn. 2023) (not enacted). But later portions of the bill included other provisions, such as automatic voter registration and early-voting provi-

sions similar to the ones that the legislature later enacted in a different statute.

When the bill was considered by the House Elections and Finance Policy Committee, Secretary Simon and a staff member appeared at the hearing, and Secretary Simon testified at some length on his budget request. *See generally Hearing on H.F. 1723 Before H. Comm. on Elections Fin. & Pol’y*, Minnesota 93rd Legis., <https://www.house.mn.gov/hjvid/93/896734> (Mar. 29, 2023). Later in the hearing, committee members began discussing and asking questions about other provisions of the bill, including automatic registration and early voting. Rep. Quam, an opponent of the bill, complained that he had asked the Secretary of State’s office for a written list of the differences between Election Day voting and the early-voting proposal, including the role of party-balanced election judges—and had not received the list, and that “I am frustrated that I can’t get an answer” on that. *Id.* at 49:23–50:57. Secretary Simon responded that “we were invited here to just discuss our budget,” and that while they would try to discuss “other questions on the bill, I hope you understand that our narrow mission this morning was to talk technically about the budget.” *Id.* at 57:18-34. One of the authors of the bill, Rep. Bahner, responded to Rep. Quam’s remarks by stating that, under its early-voting procedures, “we follow the same process and procedure during the day, the same checks and balances each and every day, as we do on election day.” *Id.* at 1:10:24–1:11:23.

The Secretary’s testifying staff member expressed agreement with both sides of the debate. She did not dispute Rep. Quam’s statement that the Office had not produced the written analysis he requested. In response to Rep. Bah-

ner's statement, she agreed "that would be correct" that early voting procedures are identical to Election Day procedures. *Id.* at 1:11:32-35. But in response to Rep. Torkelson's question, she stated that election judges "are not required" for early voting "but they are allowable." *Id.* at 1:24:31-47.

Under this Court's precedents, these statements carry little or no weight. Most of them came from opponents of the bill arguing against it. There is no indication that any member of the majority agreed with these statements—and indeed one of the bill's authors responded negatively to them. The remaining comments were from a witness who the Secretary recognized had not expected to testify on this topic, and who gave other testimony that could be regarded as in tension with it. It appears that these statements can be reviewed only by watching the House's video archives. And all of this happened in one House committee discussion on a *different* bill from the one that ultimately enacted the early voting law.

So it is hard to regard these materials as proving much of anything of the intent of the Legislature as a whole. They indicate the intent of the Legislature only to the extent that, when the House and Senate later decided to enact different early-voting bills, their members (1) realized that the language of those bills originated in a different House bill, (2) went back and found and reviewed the video of House committee testimony on that different bill, and (3) after viewing that footage, agreed with the interpretation of the early-voting language that was expressed primarily by minority legislators who were arguing it should not pass.

2. Respondents' post-enactment legislative history is of no weight.

That leaves Respondents' reliance on post-enactment legislative history. Respondents point out (Resp'ts' Br. at 16, 33-34) that, in a later Legislature well after the early-voting law was enacted, proposals were introduced to amend Chapter 204C to state expressly that its requirements for ballot-marking assistance and curbside voting apply to "early and in-person absentee voting locations." This is unavailing for two reasons. First, Minnesota law permits the consideration only of "**contemporaneous** legislative history," not post-enactment history. Minn. Stat. §645.16 (emphasis added). This means that legislators may not influence the courts' interpretation of a statute by what they say or do after its enactment. *See Haage v. Steies*, 555 N.W.2d 7, 9 (Minn. Ct. App. 1996).

Second, even if the Court considered these post-enactment proposals, they offer no real indication of legislative intent as to the early-voting law. The 2025 Legislature may have decided not to advance those proposals for any number of reasons that had nothing to do with what the preexisting early-voting law meant. Legislators may have simply had other priorities and not given any consideration to what existing law meant. Or indeed, legislators may have reviewed the existing law, concluded that it already required election judges for early-voting sites, and so decided that the proposals were duplicative and unnecessary.

3. The contextual indicia of the Legislature’s intent outweigh any contrary legislative history.

Whatever limited weight this legislative history might carry in the search for legislative intent, it cannot overcome the powerful contextual indications described above. As we have explained, abandoning election judges entirely for early voting while retaining them for Election Day would be a drastic and incongruous step. The legislative history does not show that the Legislature as a whole—or anyone at all in the Senate—even considered whether the bills before them would have that effect. And even if the Legislature had known that this possibility was raised by one witness and two dissenting legislators in a committee hearing on a different bill, it is not at all likely that the Legislature agreed with that interpretation and intended that drastic outcome. Instead, the most likely reason why the Legislature would have enacted the early-voting provisions was because it *disagreed* with that interpretation, and did not intend for the provisions to create that incongruous result.

CONCLUSION

The Election Law reflects that Minnesotans want and deserve bipartisan election administration, including during early voting. Petitioners’ interpretation delivers that result. Respondents’ does not. The Court should grant the Petition.

Respectfully submitted,

Dated: July 20, 2026

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I hereby certify that this Brief is being filed and served on all counsel of record for all parties via the Minnesota appellate court electronic filing system.

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