

**NO. A22-0111**

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State of Minnesota  
**In Supreme Court**

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Minnesota Voters Alliance, et al.,

*Appellants,*

vs.

Office of the Minnesota Secretary of State,

*Respondent.*

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**APPELLANTS' BRIEF**

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## STATEMENT OF LEGAL ISSUES

**(1) Whether Minnesota Rule 8210.2450, subpart 2 exceeds the statutory authority of the Secretary of State because it makes compliance with the signature verification requirement of Minnesota Statutes, section 203B.121, subdivision 2(b)(2) impossible for ballot-board members.**

- a. Appellants raised this issue in their Petition for a Declaratory Judgment.
- b. There is no trial court ruling in this matter because it is a declaratory judgment action. The administrative record on appeal includes, *inter alia*, references to the propriety of the rule in the Order adopting the rule. OSS 0707-0708, 0818-0822.
- c. This issue was preserved for appeal because it was raised in the Petition, and the court of appeals held that subpart 2 of the rule at issue does not conflict with section 203B.121, subdivision 2(b)(2). Add. 10.
- d. Apposite Cases and Statutes:
  1. Minn. Stat. § 203B.121;
  2. Minn. R. 8210.2450;
  3. *Green v. Whirlpool Corp.*, 389 N.W.2d 504 (Minn. 1986);
  4. *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269 (Minn. 2022).

**(2) Whether Minnesota Rule 8210.2450, subpart 3 exceeds the statutory authority of the Secretary of State because it makes compliance with the signature verification requirement of Minnesota Statutes, section 203B.121, subdivision 2(b)(3) impossible for ballot-board members.**

- a. Appellants raised this issue in their Petition for a Declaratory Judgment.
- b. There is no trial court ruling in this matter because it is a declaratory judgment action. The administrative record on appeal includes, *inter alia*, references to the propriety of the rule in the Order



adopting the rule. OSS 0707-0708, 0818-0822.

- c. This issue was preserved for appeal because it was raised in the Petition, and the court of appeals held that subpart 3 of the rule at issue does not conflict with section 203B.121, subdivision 2(b)(3). Add. 12.

- d. Apposite Cases and Statutes:

1. Minn. Stat. § 203B.121;
2. Minn. R. 8210.2450;
3. *Minn. Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441 (Minn. 2020);
4. *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269 (Minn. 2022).

## STATEMENT OF THE CASE

Appellants Minnesota Voters Alliance, Tony Ward, Thomas Polachek, and Edward Bailen brought this declaratory judgment action in the court of appeals on January 25, 2022, challenging the validity of Minnesota Rule 8210.2450, subparts 2 and 3. The Secretary of State (“Secretary”) submitted the electronic record<sup>1</sup> to the court of appeals on February 25, 2022.

## RELEVANT FACTS

### **I. Absentee Balloting Was Minnesota’s Primary Means of Casting Ballots in the 2020 General Election and Remained Historically Popular in the 2022 Midterm Primary Election.**

In the wake of COVID-19, Minnesotans cast a record number of absentee ballots in the 2020 election: 58% of the total ballots in the general election (1.9 million out of 3.3 million). “Absentee Data for Past Elections,” <https://www.sos.state.mn.us/election-administration-campaigns/data-maps/absentee-data> (last visited Nov. 14, 2022). This is a substantial upward trend—in the 2016 general election, for comparison, there were fewer than 700,000 ballots cast absentee. *Id.* Of the ballots cast in the 2020 Minnesota primary and general elections, more than 32,000 were rejected (20,240 in the general, and 12,229 in the primary). *Id.* Of those 32,000 rejected, over 7,200

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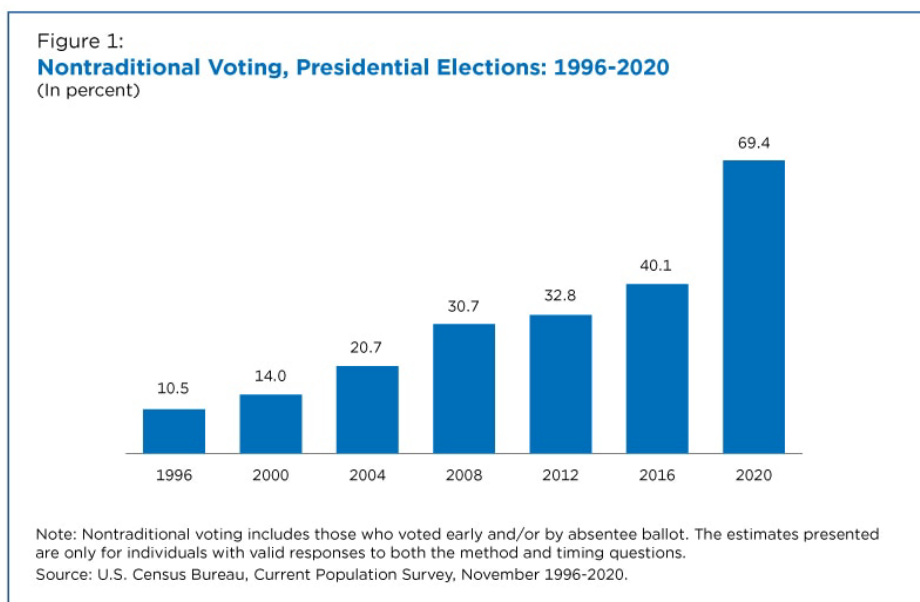
<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 128.03 and the 2016 Advisory Committee Comment, references to the agency record will use the Secretary’s Bates numbering system (OSS\_\_\_\_) for citations.

were rejected because of voter identification number and signature mismatch. *Id.*, Spreadsheet of statewide absentee voting statistics 2014-2022, *available at* <https://www.sos.state.mn.us/media/5153/statewide-absentee-voting-statistics-2014-to-2022.xlsx> (link opens Excel document) (last visited Nov. 14, 2022).

This is not a small number—prior Minnesota elections have been decided by far smaller differences. Office of the Minnesota Secretary of State, “Minnesota’s Historic 2008 Election,” *available at* <https://www.sos.state.mn.us/media/3078/minnesotas-historic-2008-election.pdf> (last visited Nov. 15, 2022) (2008 U.S. Senate race decided by 312 votes out of 2.4 million cast; 1962 governor’s race decided by 91 votes out of 1.3 million cast).

In the 2022 midterm election, absentee balloting continued to increase in popularity relative to prior “normal” years, even without COVID-19 restrictions driving people away from in-person voting. In the 2022 primary, Minnesotans cast 155,097 absentee ballots, compared to 143,975 cast in the 2018 midterm primary election and only 45,649 in the 2014 midterm primary election. “Absentee Data for Past Elections,” <https://www.sos.state.mn.us/election-administration-campaigns/data-maps/absentee-data>.

Absentee voting is more popular than ever, and has trended more popular each election since 1996, even not considering the impact of the government response to COVID-19 on the 2020 election:



Consistently, absentee and mail-in voting are likely to increase in popularity for the foreseeable future, cementing the importance of ensuring that the Secretary's rules for processing these ballots comply with the law.

## **II. Confidence in Minnesota's Electoral System Is a Nonpartisan Issue Essential to the Health of Our State.**

If Minnesotans know that the Secretary's rules comply with the law, their confidence in the legitimacy of Minnesota elections will increase, which will only improve the political health of our State. While some might not take seriously the concerns of those who believe, in 2022, that election integrity is a major issue in Minnesota, those concerns are real, and they have been historically persistent on both sides of the political aisle. Recent research demonstrates that mail and absentee balloting have exacerbated those concerns among Republican voters in particular.

As of the 2016 Presidential election, Republicans reported only a 20%

confidence in the national vote. At the same time, Democrats reported only a 29% confidence in the national vote. Jesse T. Clark and Charles Stewart III, “The Confidence Earthquake: Seismic Shifts in Trust in the 2020 Election,” Draft of July 15, 2021, p. 5, *available at* <https://ssrn.com/abstract=3825118>. That changed dramatically after the 2020 election and its attendant controversy, with only 7.8% of Republicans, but a suddenly-skyrocketing 52.5% of Democrats, expressing confidence in the national vote. *Id.*

Confidence with respect to mail-in and absentee ballots drove this divide in 2020. As commentators have noted, on a national scale:

In 2020, .... living in a state that Trump lost and that had a high volume of mail ballots was associated with lower confidence among Republicans that their own ballot was counted as intended, that ballots in their county were counted as intended, and that ballots in the state were counted as intended.

....

Finally, Democrats in states that Biden won in 2020 were even more confident of their state’s vote count and the vote count of the whole nation if the state had a high volume of mail ballots.

*Id.* at 19-20.

But prior to 2020, Democrats expressed a similar lack of confidence in elections:

In 2008, 42 percent of John McCain’s supporters were very confident that votes nationwide would be counted as intended in the pre-election wave; this declined to 23 percent post-election. At the same time, the percent of Barack Obama’s supporters who were very confident grew from 11 percent to 39 percent.

*Id.* at 9. And likewise, “Democratic identifiers responded to the loss by Hillary

Clinton by increasing their doubts about the accuracy of the vote count in 2016.” *Id.* at 21.

Confidence in elections is a persistent, non-partisan, and important problem, which Minnesota law attempts to address in Minn. Stat. § 203B.121, including through a signature-matching process. As some commentators have noted, one of the “security procedures to ensure the voter requesting the ballot is the voter receiving and voting the ballot” is “through signature verification,” where “election officials examine and verify every signature, comparing it with voter registration records or other documents that contain the voter’s signature.” “5 Reasons to Have Confidence in Mail-In Voting,” *League of Women Voters*, July 29, 2020, available at <https://www.lwv.org/blog/5-reasons-have-confidence-mail-voting> (last visited Nov. 14, 2022). Similarly, the federal Cybersecurity & Infrastructure Security Agency assures Americans that they can be more confident in their elections, regardless of whether votes are cast in-person or by mail, because “election integrity safeguards, including signature matching and verification of other personal data, protect against people casting ballots on behalf of others.” “Election Security Rumor Vs. Reality,” *CISA*, Nov. 8, 2022, available at <https://www.cisa.gov/rumorcontrol> (last visited Nov. 14, 2022). And while not every state requires signature verification on absentee ballots, as Minnesota partly does, commentators often cite signature verification as a bedrock election security measure that delivers confidence to voters.

Minnesotans’ confidence in the fairness of state-run elections is more important than ever for the health of our State and our country. It will continue to be essential for the foreseeable future. It is thus essential that the Court ensure that the Secretary’s rule, Minn. R. 8210.2450, is consistent with state law allowing and requiring signature matching for absentee ballots, depending on the circumstance.

### **III. The Appellants.**

Appellant Minnesota Voters Alliance (“MVA”) is a nonpartisan organization which advocates for election integrity and provides research and voter education. MVA advocates for the interests asserted by the individual Appellants described below, who are each long-time supporters and volunteers with MVA. (Pet. ¶ 1).

Appellant Tony Ward is an individual resident of Ramsey County, Minnesota, who served as an assistant head election judge and on the ballot board for Ramsey County for the 2020 and 2021 elections, and served in the same capacity for the 2022 primary and general elections. (Pet. ¶ 2).<sup>2</sup> Appellant

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<sup>2</sup> Appellants moved the court of appeals to supplement the record for purposes of standing to include their affidavits submitted in opposition to the Secretary’s motion to dismiss below. Mot. to Supplement Record, Mar. 1, 2022. The court of appeals granted the motion to supplement the record for purposes of standing and denied the Secretary’s motion to dismiss. Order Denying Motion to Dismiss, Mar. 29, 2022. The Secretary has not appealed the denial of his motion to dismiss on standing grounds. Appellants did, in fact, serve on the ballot boards on which they had expected to serve and alleged they would serve.

Thomas Polachek is an individual resident of Ramsey County, Minnesota, who served as an election judge and on the ballot board for Ramsey County for the 2020 and 2021 elections, and served in the same capacity for the 2022 primary and general elections. (Pet. ¶ 3). Appellant Edward Bailen is an individual resident of Ramsey County, Minnesota, served as an election judge and on the ballot board for Ramsey County, Minnesota for the 2020 and 2021 elections, and served in the same capacity for the 2022 primary and general elections. (Pet. ¶ 4).

#### **IV. The Creation of Minnesota Rule 8210.2450, Subparts 2 and 3.**

The Secretary created the Rule at issue via rulemaking in 2010. On May 10, 2010 (34 S.R. 1561), the Secretary adopted with modifications Minn. R. 8210.2450, which had been proposed and published at 34 S.R. 686-720 on November 16, 2009. OSS1421.

The Rule was not initially proposed in the rulemaking process in which it was formed. The initial notice-and-comment period related to the Rule took place prior to the passage of 2010 Minnesota Laws chapter 194, section 9, which the Governor signed on March 24, 2010. Chapter 194 created Minn. Stat.

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Thus, in the event the Secretary raises standing or mootness issues in this Court, or if the Court intends to consider standing *sua sponte*, the individual Appellants “stand” ready to supplement the record demonstrating that they did, in fact, serve on the Ramsey County Absentee Ballot Board in 2022.



§ 203B.121.

After the creation of section 203B.121, the Secretary proposed to entirely revamp and include wholly new subparts of the rules related to Minnesota's absentee ballot boards, as part of the newly created Minn. R. 8210.2450. OSS0707-0709 (ALJ Order, Feb. 16, 2010, ¶¶ 78-80) (proposing a new Rule 8210.2450 to correspond with the still-valid Minn. Stat. § 203B.12); OSS0830 (Draft AR3905); OSS0798 (proposed Order Adopting Rules post-enactment of Minn. Stat. § 203B.121); OSS0862-0864 (Revisor's draft of the new post-statutory-enactment Minn. R. 8210.2450). Even though these new rule subparts were substantially different from the former rules, they did not go through the notice and comment process. OSS1350, ¶3 (Secretary's Order Adopting Rules as approved by the ALJ, p. 1).

To adopt the Rule, therefore, the Secretary had to follow the requirements for "modification" of proposed rules to ensure that the proposed changes were not "substantial." OSS0721 (Apr. 16, 2010 letter from Secretary to Chief ALJ Krause) (citing Minn. Stat. § 14.16 & Minn. R. 1400.2240, subp. 5); OSS0818-0823 (citing Minn. Stat. § 14.05). However, the repeal of Minn. Stat. § 203B.12, and its replacement with section 203B.121, was a substantial change. Case in point, section 203B.121 modified the signature-match requirement of the old Section 203B.12 and added an identification number match with another corresponding signature match. These were major changes,

requiring major new rule changes.<sup>3</sup> Consistently, the Secretary's proposed order adopting the rules identifies huge differences in the new and old rule subparts:

This section changes the way in which absentee ballots are processed so that the functions formerly conducted by election judges are now conducted by the members of the absentee ballot board.

....

[T]he enactment of Minnesota Laws 2010, chapter 194, sec. 9,...requires that ballot board members conducting absentee ballot board duties be of different major political parties, which also designates the officials conducting duties under new section 203B.121 as ballot board members....

....

The...remaining changes are required by Minnesota Laws 2010, Chapter 194, section 27, which repealed the signature match requirement in prior law.

....

This change is required by Minnesota Laws 2010, chapter 194, sec. 9, subd. 2, (b)(2) and sec. 27, repealing section 203B.12, subd. 2, (2), which set forth the signature match requirement in prior law. The replacement language in Laws 2010, chapter 194, section 9 simply requires that the voter sign the certification in the envelope. By repealing the prior signature match requirement, but retaining the requirement that the voter sign the certificate, the legislature has indicated that it still requires the signature of the specific voter identified on the envelope. Failure to meet this statutory requirement is a reason for rejection of the absentee ballot. However, the repeal of the signature match requirement also indicates that a ballot should not be otherwise rejected because of the signature under this subpart.

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<sup>3</sup> While Appellants' challenge focuses on the confusion the rules create for ballot-board members, it bears noting that the rules likely violated MAPA by not undergoing new notice and comment in their adoption. *See* Minn. Stat. § 14.05. The rushed nature of these rules' creation, coupled with the lack of public scrutiny, likely contributed to the confusion they have created.

OSS1349, 1370, 1371, 1372, 1373 (ALJ Order approving rules, Apr. 28, 2010) (modifying Subpart 2 and also adding entirely new Subpart 3).

Despite the major changes to Minn. Stat. § 203B.121 and the concomitant major changes to the rules, the Chief ALJ approved the rules without requiring new notice-and-comment. Thus, the rule was not subject to the scrutiny which typically attends major changes to Minnesota election law.

Instead, the two subparts of the rule at issue here had a different genesis. The Secretary, in correspondence with the ALJ, identified the origin of Subpart 2's criteria for evaluating signatures in a January 14, 2010 letter to the ALJ:

The Office of the Secretary of State appreciates the opportunity to respond to the supplemental comments submitted by Tony Trimble on behalf of the Republican Party of Minnesota in a letter dated January 4, 2010.

....

Mr. Trimble also suggests adding rules to provide interpretive guidance to election judges in accepting and rejecting absentee ballots, and proposes language in Exhibit C of his letter. This office considered his proposal and agrees that interpretive guidance along these lines could be helpful to election judges. This office has reviewed his suggestions and modified them to conform to both the style and format of Minnesota Rules and standard procedures. Please find the office's proposed interpretive guidance in Exhibit 2.

OSS0685-0686 (Jan. 14, 2010 letter from Secretary to ALJ Manuel Cervantes). The Republican Party of Minnesota suggested, in relevant part, the following guidance for election judges in accepting and rejecting absentee

ballots:

A voter's signature on the return envelope must be the genuine signature of the individual who made the application for the ballot. Ballot envelopes that have signatures that are similar, but not identical to, the signature on the application should be marked "accepted". For example, if a voter signed an application Jonathon R. Doe, but signed the ballot envelope John Doe, that ballot envelope should be marked "accepted". If the voter signed using a signature mark on both the application and the envelope, that envelope should be marked "accepted".

OSS0642 (Exhibit C to Jan. 4, 2010 letter from Tony Trimble to ALJ Manuel Cervantes). The Secretary then converted this language into the following:

The voter's name and address on the absentee application must match the voter's name and address on the return envelope. Use of, or lack of, full names, nicknames, abbreviations or initials on either document are not a reason for rejection.

Election judges must determine that the return envelope contains the genuine signature of the individual who made the application for the ballot by comparing the signature on the envelope to the signature on the absentee ballot application. Use of, or lack of, full names, nicknames, abbreviations or initials within either signature are not a reason for rejection. A signature is considered genuine even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes, section 645.44, Subd. 14.

OSS0688 (Exhibit 2 to Jan. 14, 2010 letter from Secretary to Manuel Cervantes). However, after the Governor signed chapter 194 on March 24, 2010, the Secretary made substantial changes to this language, resulting in the following for Subpart 2:

Subp. 2. **Name, address, and signature review.** The voter's name and address on the absentee ballot application must match the voter's name and address on the return envelope. Use of, or lack of, full names, nicknames, abbreviations, or initials on either document are not a reason for rejection.

Ballot board members must determine whether the return envelope was signed by the voter. Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter's even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14. A ballot must be rejected under this subpart on the basis of the signature if the name signed is clearly a different name than the name of the voter as printed on the return envelope. This is the only circumstance under which a ballot may be rejected on the basis of signature under this subpart.

OSS1489 (May 11, 2010 Revisor's final copy of new rules). Except for the change of "return" envelope to "signature" envelope, the language is the same today. The Secretary justified this change by incorrectly claiming, in contradiction to the language of the proposed rule itself that the law "repeal[ed] the prior signature match requirement." OSS1373.

Subpart 3 was created entirely out of whole cloth after the passage of Minn. Stat. § 203B.121:

After line 33.23 of the AR3905 draft dated April 26, 2010, insert a new subpart to read:

**Subpart 3. Identification Number Review.** Ballot board members must determine whether the identification number provided by the voter on the certificate is the same as the identification number provided by the voter on the absentee ballot

application.

If the numbers do not match or the voter did not provide identification numbers on both documents, the ballot board members must compare the signatures on the absentee ballot application and on the return envelope to determine whether the ballots were returned by the same person to whom they were transmitted. Use of, or lack of, full names, nicknames, abbreviations or initials within either signature are not a reason for rejection. A signature is considered the voter's even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes. section 645.44. Subd. 14.

OSS1109 (Apr. 27, 2010 correspondence from Secretary to ALJ Cervantes). Again, with the exception of the change of “return” envelope to “signature” envelope, the language is the same today.

The created rule was thus substantially different than the modification proposed by the Republican Party of Minnesota, and of largely new substance after the March 24, 2010 signing of chapter 194 and its codification as Minn. Stat. § 203B.121. On April 21, 2014 (38 S.R. 1368), the Secretary amended the Rule. On May 23, 2016 (40 S.R. 1553), the Secretary amended the Rule by adopting regulations proposed on January 19, 2016 (40 S.R. 816). OSS2642.

Minn. Stat. § 203B.121 was modified after the most recent rulemaking in a special session in 2019 (2019 Minn. Laws, 1st Spec. Sess., ch. 10, art. 4, sec. 3), the regular session of 2021 (2021 Minn. Laws, ch. 31, art. 3, sec. 4 & 5), and a special session in 2021 (2021 Minn. Laws, 1st Spec. Sess., ch. 12, art. 4,

sec. 6). Of these amendments, the 2021 regular session law made only clarifying changes to subdivision 2, which relates to the rule here, and the 2021 special session law added a provision to subdivision 1 which explains the training required for ballot-board members under subdivision 1.

**V. The Legislative History of Minnesota Statutes, Section 203B.121 Demonstrates That Subpart 2 Allows a Signature Match, and Subpart 3 Requires It After an Identification Number Mismatch.**

Contrary to the Secretary's claim during the rulemaking process, Minn. Stat. § 203B.121 did not relegate the signature match required in prior years only to a post-identification-number match.

The purpose of Minn. Stat. § 203B.121 was to create uniform absentee ballot boards at the city or county level across the state, with party-balanced election judges accepting and rejecting absentee ballots. *Hearing on H.F. 3111 Before H. State & Local Gov't Operations Reform Tech. & Elections Comm.*, 2010 Minn. Leg. 86th Sess., Mar. 2, 2010, at 34:00 (statement of Rep. Winkler) (hereinafter *Hearing on H.F. 3111*);<sup>4</sup> *House Floor Session on H.F. 3111*, 2010 Minn. Leg. 86th Sess., Mar. 8, 2010, at 48:00 (statement of Rep. Winkler) (hereinafter *House Floor Session on H.F. 3111*).<sup>5</sup>

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<sup>4</sup> Available at <https://www.house.leg.state.mn.us/hjvid/86/502>.

<sup>5</sup> Available at [https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00\\_Main\\_video](https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00_Main_video).

In addition, the law **added** an identification-number matching prong which, if the numbers match, provides assurance to ballot-board members that the ballot was actually cast by the voter. *Compare* Minn. Stat. § 203B.12 (2009) (available at <https://www.revisor.mn.gov/statutes/2009/cite/203B.12>), *with* Minn. Stat. § 203B.121, subd. 2(b)(3) (2010).

The 2009 law, housed in Minn. Stat. § 203B.12 (2009), required, among other items, that “election judges” be “satisfied that....the voter’s signature on the return envelope is the genuine signature of the individual who made the application for ballots....” *Id.* There was no number-matching requirement. *See id.* The 2010 law, among other changes, **added** the number-matching prong. Minn. Stat. § 203B.121, subd. 2(b)(3). While the 2010 law removed the language quoted above, it maintained that elections judges must be “satisfied” that “*the voter* signed the certification on the envelope.” *Id.* at subd. 2(b)(2) (emphasis added). To that point, on the House floor, Rep. Winkler described the bill as follows: “it changes the process for matching absentee ballot applications with the ballots that are returned, **enhancing** the signature match with a number match system.” *House Floor Session on H.F. 3111* at 48:00 (statement of Rep. Winkler) (emphasis added).<sup>6</sup>

It is true that Senator Sieben stated in the Senate floor debate that the

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<sup>6</sup> Available at [https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00\\_Main\\_video](https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00_Main_video).



identification number prong would be used “instead of” a signature match. *Senate Floor Debate on S.F. 2622*, 2010 Minn. Leg. 86th Sess., Mar. 8, 2010, at 50:25 (hereinafter *Senate Floor Debate on S.F. 2622*). Representative Winkler also did say in his earlier committee statement that “we’re moving from a signature match between the application and the return ballot to a number match.” *Hearing on H.F. 3111* at 34:00 (statement of Rep. Winkler).

But neither Sen. Sieben nor Rep. Winkler said that signature verification would be eliminated in the bill. As will be further discussed in the analysis below, this Court has interpreted H.F. 3111’s encoded text to refute Rep. Winkler’s statements as to the bill’s intent within just the last year. *Compare Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269, 278 (Minn. 2022) (“The Alliance asserts that the absentee ballot board statute, Minn. Stat. § 203B.121, requires that absentee ballot boards contain election judges and recognizes no other category of membership....because Minnesota law prioritizes balanced, partisan involvement in elections. This assertion cannot overcome the plain language of the statute.”) *with Hearing on H.F. 3111* at 34:40-35:00 (“The makeup of the absentee ballot board is a little different than the bill we had last year which allowed county staff to do the work, and again, through work with Representative Kiffmeyer we now will have election judges doing that.”).<sup>7</sup>

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<sup>7</sup> It is also important to note the purpose of the bill enacting section 203B.121 as identified by other drafters, including former Secretary of State Mary

The prior language of Minn. Stat. § 203B.12, the language of H.F. 3111, and the last statement of Rep. Winkler—on the House *floor*—as he was convincing the entire House to vote for the bill in the face of several proposed amendments all show that Minn. Stat. § 203B.121 militates in favor of the retention of the signature-match requirement in subpart 2 of Minn. R. 8210.2450.

## **VI. Procedural History.**

Appellants filed this declaratory judgment action on January 25, 2022. The Secretary moved to dismiss based on standing, and the court of appeals denied the motion to dismiss and granted Appellants’ motion to supplement the record as to standing. Order Denying Motion to Dismiss, Mar. 29, 2022. On August 15, 2022, the court of appeals declared the rule at issue valid. Appellants timely filed a petition for review on August 22, 2022, and the Court granted review on October 18, 2022.

## **ARGUMENT AND AUTHORITIES**

In the 2020 election, 1.9 million out of the state’s 3.3 million ballots cast—58%—were cast absentee. In the 2022 midterm elections, 657,575 ballots were cast absentee—about 20,000 more than in the 2018 midterm elections.

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Kiffmeyer. Then-Representative Kiffmeyer noted that the purpose of the new law was accuracy, related both to preventing “wrongly rejected” and “wrongly accepted” ballots, and that the law addressed “both.” *Hearing on H.F. 3111*, at 39:28 (statement of Rep. Kiffmeyer).

As provided by Minn. Stat. § 203B.121, absentee ballots are reviewed and either approved or rejected by members of the “ballot board” organized at either the county or city level. Ballot-board members are, therefore, entrusted with a significant duty to ensure the accurate processing of ballots in Minnesota. It is essential that those on the ballot board entrusted with this duty clearly understand how they must “determine whether” to accept or reject received absentee ballots.

Minn. Stat. § 203B.121 provides that clear and unambiguous direction to ballot-board members. To accept a ballot, “a majority of the members of the ballot board examining the [ballot] envelope” must be “satisfied” that, among other requirements:

- a. “the voter signed the certification on the envelope” (subd. 2(b)(2)).
- b. “the voter’s Minnesota driver’s license, state identification number, or the last four digits of the voter’s Social Security number are the same as a number on the voter’s absentee ballot application or voter record. If the number does not match, the election judges must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted” (subd. 2(b)(3)).

If a majority of the ballot-board members examining the envelope are not “satisfied” that these requirements have been fulfilled, they must “mark the signature envelope ‘Rejected,’ initial or sign it below the word ‘Rejected,’ list the reason for the rejection on the envelope, and return it to the county auditor.” Minn. Stat. § 203B.121, Subd. 2(c)(1). The word “satisfied” is clear: it

means, according to Merriam-Webster in this context, “persuaded by argument or evidence.” “Satisfied,” *Merriam-Webster*, available at <https://www.merriam-webster.com/dictionary/satisfied>.

However, after the passage of Minn. Stat. § 203B.121 in 2010, and without *any* public comment, the Secretary created a rule, including Minn. R. 8210.2450, subparts 2 and 3, that confuses what it means for a ballot board member to be “satisfied” that these requirements have been met. This substantially different rule (from the initially proposed rules in 2009) attempts to throw out the common understandings of the express term “satisfied” and “the voter” and prohibit the consideration of evidence which would help a ballot board member become “persuaded by...evidence” that a ballot should be accepted under the statute. It replaces the discretion, judgment, wisdom, and training of ballot-board members with that of the Secretary.

Subparts 2 and 3 of the rule *require* ballot-board members to *ignore* the following items, which could otherwise lead to their “dissatisfaction” regarding a signature envelope:

If the signature uses or lacks “full names, nicknames, abbreviations, or initials within *either signature*”;

“[E]ven if a voter uses a signature mark on *either or both* documents”;

“[I]f a voter has another individual or different individuals sign the voter’s name in their presence on *either or both* the application and the signature envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14.”

Minn. R. 8210.2450, subps. 2 & 3 (emphasis added).

Further, under subpart 2, the rule replaces the requirement that ballot-board members be satisfied that “the voter signed” an absentee ballot envelope.

In its place is a *name*-matching standard:

A ballot must be rejected under this subpart on the basis of the signature if the name signed is clearly a different name than the name of the voter as printed on the signature envelope. This is the only circumstance under which a ballot may be rejected on the basis of signature under this subpart.

Not only is this subpart contrary to the plain meaning of the statute, but it even contradicts itself, as it had just stated in the two immediately prior sentences that a different name in a signature was *not* grounds for rejection.

In other words, under subpart 2 of the rule, in conflict with the statute, instead of being “satisfied” that “the voter signed” a signature envelope, ballot-board members must accept ballots even if they are entirely “unsatisfied” that “the voter signed” the ballot’s envelope because the signature on the signature envelope is different from the signature on the ballot application. Likewise, even where there are mismatched identification numbers between the ballot application and the signature envelope—likely already leading to some doubt—election-judge ballot-board members may not consider that the two documents are written very differently.

It is important as well to consider that the acceptance or rejection of

ballots is decidedly *not* a matter of personal politics. No ballot board member has a clue as to the candidate or ballot-question selections of the vote in the envelope they are examining. The question here is strictly nonpartisan: whether the rule subverts the statutory intent to prevent ballots from being accepted which indicate to ballot-board members that a person who is *not* the voter returned a ballot meant for the voter. And it is also important to recognize that the safeguards created by the legislature in section 203B.121 *protect* the most vulnerable from a third-party taking their ballot. To remove these protections, as the rule does, is deeply undemocratic.

The individual Appellants here have served on several Ramsey County ballot boards, including for the 2022 election. They allege in the Petition for a Declaratory Judgment that the rules at issue have created confusion, which puts them in constant peril of violating either the rule or the statute. This Court can fix this confusion by declaring Minn. R. 8210.2450, subparts 2 and 3, invalid.

### **I. Applicable Legal Standards.**

This Court has jurisdiction to determine the validity of an agency's rules, including amendments. Minn. Stat. §§ 14.44 & 14.45; *see Minn. League of Credit Unions v. Minn. Dep't of Commerce*, 486 N.W.2d 399, 400 (Minn. 1992). A declaratory judgment action such as this one is a “pre-enforcement challenge...it questions the process by which the rule was made and the rule's

general validity before it is enforced against any particular party.” *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984). Minn. Stat. § 14.45 “defines the scope of judicial review.” *Id.* It provides:

In proceedings under section 14.44, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures.

Minn. Stat. § 14.45.

This Court reviews questions of statutory interpretation de novo. *Christianson v. Henke*, 831 N.W.2d 532, 535 (Minn. 2013). The interpretation of an administrative rule likewise “presents a question of law that [the Court] review[s] de novo.” *J.D. Donovan, Inc. v. Minn. DOT*, 878 N.W.2d 1, 5 (Minn. 2016). Whether a conflict between the statute and the rule exists involves rules of statutory interpretation. *See Green v. Whirlpool Corp.*, 389 N.W.2d 504, 506 (Minn. 1986). “Like statutes, administrative regulations are governed by general rules of construction.” *White Bear Lake Care Ctr., Inc. v. Minn. Dep’t of Pub. Welfare*, 319 N.W.2d 7, 8 (Minn. 1982). On matters of statutory interpretation, “reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.” *St. Otto’s Home v. Minn. Dep’t of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989).<sup>8</sup>

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<sup>8</sup> The Secretary’s interpretation is not entitled to any deference, the reason for which is probably best exemplified by this Court’s rejection of the Secretary’s 2010 interpretation of 2010 Minnesota Laws chapter 194, section 9, which

“When a statute is unambiguous, [the Court] appl[ies] the plain meaning of the statute.” *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269, 275 (Minn. 2022). The Court “will not ‘go beyond the plain language of the statute to determine the intent of the legislature’ when the language is unambiguous.” *Id.* (quoting *Rohmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012)). To determine plain meaning, the Court “interpret[s] statutes ‘so as to give effect to each word and phrase,’ and [the Court] may consult dictionary definitions to determine a word’s plain meaning.” *Mittelstaedt v. Henney*, 969 N.W.2d 634, 639 (Minn. 2022) (quoting *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016)). Finally, in “interpreting the plain language of a statute, [the Court] read[s] words in context.” *Minn. Voters All.*, 971 N.W.2d at 279.

A statute is ambiguous where “there is more than one reasonable interpretation.” *Spann v. Minneapolis City Council*, 979 N.W.2d 66, 73 (Minn. 2022). If so, the Court considers “the canons of statutory construction to determine which reasonable interpretation [it] should adopt.” *Id.* (internal quotation mark omitted). Ambiguity in a statute also “permits [the Court] to consider not just the current language of the [statute], but also prior versions of the law,

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stated: “Minnesota Laws 2010, chapter 194, sec. 9...requires that ballot board members conducting absentee ballot board duties be of different major political parties.” OSS1371 (Order Adopting Rules, Apr. 28, 2010). The Court rejected that interpretation in *Minn. Voters All. v. Cty. of Ramsey*, 971 N.W.2d 269, 280 (Minn. 2022) (“The ‘different major political parties’ requirement applies only, and specifically, to election judges who examine the signature envelopes.”).



‘the occasion and necessity for the law,’ ‘the circumstances under which it was enacted,’ ‘the mischief to be remedied,’ ‘the object to be obtained,’ and ‘the contemporaneous legislative history.’” *Id.* at 76 (quoting Minn. Stat. § 645.16).

Where a rule conflicts with “the plain meaning of” a statute, it exceeds agency authority and is invalid. *Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441, 445 (Minn. 1993); *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 486 (Minn. 1995). “[W]hile administrative agencies may adopt regulations to implement or make specific the language of a statute, they cannot adopt a conflicting rule.” *Green*, 389 N.W.2d at 506. At minimum, a rule must “reasonably implement” the statute which animates it. *Id.* A “conflict” exists where a rule “imposes...requirements which have no counterpart in the statutes and are inconsistent with them.” *Id.*; accord *Wallace v. Comm’r of Taxation*, 184 N.W.2d 588, 594 (1971). “[A] rule adopted in pursuit of legislative goals cannot subvert the primary purpose behind the legislation.” *Weber v. Inver Grove Heights*, 461 N.W.2d 918, 922 (Minn. 1990).

Important as well, the Secretary cannot create rules which are an “enlargement of express powers by implication.” *Hirsch*, 537 N.W.2d at 485. Rather, administrative rules “must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.” *Id.*

Thus, if Minn. Stat. § 203B.121, subdivisions 2(b)(2) and 2(b)(3) conflict with Minn. R. 8210.2450, subparts 2 and 3, respectively, as Appellants submit

they do, the rule must be declared invalid. And for the Court to determine whether Minn. Stat. § 203B.121, subdivisions 2(b)(2) and 2(b)(3) conflict with Minn. R. 8210.2450, subparts 2 and 3, respectively, the Court must discern the meaning of these four provisions using the principles of statutory interpretation and compare each statute-rule pair.

**II. Ballot-Board Members Reviewing a Signature Envelope Have Available to Them the Signature Envelope, the Absentee Ballot Application, and Voter Records in the Statewide Voter Registration System.**

Knowing what tools are available to Minnesota ballot-board members examining a signature envelope is important in interpreting what the law requires of them. There are at least three things available to Minnesota ballot-board members conducting their duties.

First, ballot-board members review signature envelopes. Minn. Stat. §§ 203B.08 and 203B.121, subdivision 2(a) require that ballot-board members “take possession of all signature envelopes delivered to them.” Minn. Stat. § 203B.121, subd. 2(a).

Second, ballot-board members have access to the absentee ballot application which pertains to the voter registration for the returned signature envelope. When a paper application for an absentee ballot is submitted to a county auditor, the auditor retains that application for at least 22 months. Minn. Stat. § 203B.06, subd. 5. Further, the auditor inputs the identification

information from any absentee ballot application, whether paper or electronic, into the SVRS. Minn. Stat. § 203B.065. For its part, Minn. Stat. § 203B.121, Subd. 2(b)(3) requires, as part of any signature matching process, that the election judges reviewing the envelopes have access to the absentee ballot application.<sup>9</sup>

Third, ballot-board members reviewing an envelope must have access to a voter's record and the SVRS. They are the “members of the ballot board examining the envelope,” Minn. Stat. § 203B.121, subd. 2(b), and they must be

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<sup>9</sup> For elections in which absentee ballots may not be obtained by electronic application, all absentee ballot applications must, without question, be “signed...by the applicant.” Minn. Stat. § 203B.04, subd. 1(b). In these elections, ballot-board members will always have an application and a signature envelope to compare. In elections for federal, state, and/or county office, “an absentee ballot may alternatively be submitted electronically through a secure website that shall be maintained by the secretary of state for this purpose.” *Id.*, subd. 1(a). This second provision also states: “Notwithstanding paragraph (b), the secretary of state must require applicants using the website to submit the applicant's email address and verifiable Minnesota driver's license number, Minnesota state identification card number, or the last four digits of the applicant's Social Security number.” *Id.* The plain language of this provision does not remove the requirement of a “signed” application, just as it does not remove the requirement that an applicant provide his or her name, mailing address, or a date of the application. *See id.* While this case does not directly challenge the validity of the Secretary's online absentee ballot application process, the applicable statutory language calls into question any system of absentee ballot application processing that does not include an actual signature as part of the application. *See id.*; *compare* Minn. Stat. § 645.44, subd. 14 (requiring actual signatures where signatures are required except for documents filed with Minnesota courts); *but see* Minn. Stat. § 325K.21 (a digital signature may be “effective as if it had been written” if it meets certain criteria); *and see* Minn. Stat. § 200.02, subd. 29 (“‘Original signature’ does not include an electronic signature.”).

able to review the SVRS, which contains the “voter record” which pertains to the person whose ballot was submitted to the ballot board. Minn. Stat. § 203B.121, subd. 2(b)(3); *see* Minn. Stat. § 201.13, subd. 4 (“If a voter makes a written request for removal of the voter’s record, the county auditor shall inactivate the record of the voter in the statewide voter registration system.”); *see also* Minn. R. 8210.2450, subp. 4 (“Ballot board members must determine the voter is registered under the name and at the address on the signature envelope by using the statewide voter registration system, or a master list or polling place roster produced from the [SVRS].”).

Each of these tools is available to a ballot-board member tasked with reviewing a particular signature envelope to determine whether it should be accepted or rejected.

### **III. Minnesota Statutes, Section 203B.121, Subdivision 2(b)(2), Conflicts With Minnesota Rule 8210.2450, Subpart 2.**

Under Minn. Stat. § 203B.121, subdivision 2(b)(2), ballot-board members are required to verify that “the voter signed the certification on the envelope.” The problem with Minn. R. 8210.2450, subp. 2, is its *requirement* that ballot-board members *ignore* information which might be important to their determination of whether “the voter signed” a signature envelope. Such “guidance” is not guidance at all, but rather nullifies the statute. The Secretary has the authority to make rules which “reasonably implement” the statutes to which his

rulemaking power relates, but not to subvert them. Thus, the Secretary could *suggest* in rulemaking, for example:

Ballot envelopes that have signatures that are similar, but not identical to, the signature on the application should be marked “accepted.” For example, if a voter signed an application Jonathon R. Doe, but signed the ballot envelope John Doe, that ballot envelope should be marked “accepted.” If the voter signed using a signature mark on both the application and the envelope, that envelope should be marked “accepted.”

OSS0642 (Exhibit C to Jan. 4, 2010 letter from Tony Trimble to ALJ Manuel Cervantes).<sup>10</sup>

What the Secretary has done instead is to turn the power of “implementation” and “guidance” into a “reverse mandate”: instead of saying, “you should accept similar signatures” to determine that “the voter signed” a signature envelope, the Secretary says, ‘you may not reject except if the name signed is clearly different than the printed name.’ This reverse mandate erases the discretion afforded to ballot-board members under the statute and thus subverts the primary purpose of the law: to enable ballot-board members to make informed judgment calls based on their training, wisdom, and experience as to whether the statutory criteria are met. Consequently, the rule is invalid.

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<sup>10</sup> This language was suggested to the Secretary during rulemaking based on the guidance provided to local election officials by then-Deputy Secretary of State Jim Gelbmann after the 2008 election. OSS0631 (Trimble letter, p. 4).

**A. The Plain Meaning of Minnesota Statutes, Section 203B.121, Subdivision 2(b)(2) Allows Signature Matching and Common-Sense Judgment.**

To determine whether Minn. Stat. § 203B.121, subd. 2(b)(2) conflicts with Minn. R. 8210.2450, subp. 2, the Court must determine the meaning of each and compare them to decide whether the rule “imposes...requirements which have no counterpart in the statute[] and [is] inconsistent with [it].” *Green*, 389 N.W.2d at 506. The plain meaning of Minn. Stat. § 203B.121, subdivision 2(b)(2) makes no mention of any taboo information which a ballot-board member may not consider. But the rule does. It contains a series of prohibitions which force a ballot-board member to ignore important information which could lead that ballot-board member to be “unsatisfied” that “the voter signed the certification on the envelope.”

Minn. Stat. § 203B.121, subd. 2(b)(2) allows a ballot-board member to conduct a signature match to determine whether “the voter signed the certification on the envelope.” For a Minnesota ballot-board member to be “satisfied” that “the voter signed” a signature envelope under review, that ballot-board member must be “persuaded by argument or evidence” that “*the* voter” to whom the ballot was transmitted actually “signed” the signature envelope. Minn. Stat. § 203B.121, subd. 2(b)(2) (emphasis added); “Satisfied,” *Merriam-Webster*, available at <https://www.merriam-webster.com/dictionary/satisfied>.

The most obvious evidence of whether “the voter signed” a certification

is whether the signature on the signature envelope matches its counterpart on an absentee ballot application. It is thus no wonder that the League of Women Voters, for example, has touted signature matching as a common-sense “security procedure[] to ensure the voter requesting the ballot is the voter receiving and voting the ballot.” “5 Reasons to Have Confidence in Mail-In Voting,” *League of Women Voters*, July 29, 2020, available at <https://www.lwv.org/blog/5-reasons-have-confidence-mail-voting> (last visited Nov. 14, 2022). Signature matching is likely the best possible place to look for a ballot-board member to be “satisfied” that “the voter signed” a signature envelope.

### 1. “Satisfied.”

The Minnesota Election Law does not define “satisfied,” but “satisfied” is best defined in this context as “persuaded by argument or evidence.” “Satisfied,” *Merriam-Webster*, available at <https://www.merriam-webster.com/dictionary/satisfied>. Thus, ballot-board members must be “persuaded by evidence” that “the voter signed” the envelope—not just anyone, but “*the voter*.” This means that the ballot-board members reviewing an envelope must rely on their training, wisdom, experience, and judgment to determine whether “the voter signed” the envelope.

It is important as well that the *ballot-board members* are the ones who must be “satisfied” that “the voter signed the certification on the envelope.”

The *Secretary* cannot tell them to ignore evidence which is both available to them and relevant to their satisfaction. The Secretary cannot substitute *his satisfaction* for the ballot-board members' satisfaction. Nothing in the statutes which animate the Secretary's authority to make rules allow him to replace ballot-board members' judgment with his own.

Contrary to the rule, the legislature expressly conferred the responsibility of being "satisfied" under Minn. Stat. § 203B.121 upon ballot-board members. The legislature uses the same term related to absentee ballots returned pursuant to Minn. Stat. §§ 203B.16 through .27: election judges on the board must be "satisfied" of 5 criteria to mark a ballot returned under these sections "accepted." Minn. Stat. § 203B.24. The Secretary himself has used the term in his own rules, Minn. R. 8290.1300, to mean the same thing—persuaded by evidence. Minn. R. 8290.1300, subp. 8B, 8C(3), 10.

The most recent amendment to Minn. Stat. § 203B.121 emphasizes the importance of ballot-board members' roles in reviewing absentee ballots and supports reliance on ballot-board members' "satisfaction" based on their training, wisdom, experience, and judgment to determine whether "the voter signed" the envelope. The 2021 amendment provides for substantial training of ballot-board members in all aspects of ballot processing, including:

the processing and counting of absentee ballots, including but not limited to instruction on accepting and rejecting absentee ballots, storage of absentee ballots, timelines and deadlines, the role of the



ballot board, procedures for opening absentee ballot envelopes, procedures for counting absentee ballots, and procedures for reporting absentee ballot totals.

Minn. Stat. § 203B.121, Subd. 1; Laws of Minnesota 2021, 1st Spec. Sess. Ch. 12, art. 4, sec. 6.

Rather than acknowledge the emphasis on the “satisfaction” of ballot-board members as primary in determining whether to accept a ballot, the court of appeals below disregarded the “satisfaction” requirement, holding that the “statute does not require identical signatures, *or require further inquiry if a signature discrepancy occurs*, as it does with mismatched identification numbers.” Add. 7 (emphasis added). By so holding, the court of appeals held that the statute requires ballot-board members to *ignore* evidence which could lead to “dissatisfaction” that “the voter signed” the signature envelope. But nothing in the statutory language forbids a signature match or instructs ballot-board members to ignore obvious evidence that somebody else may have returned a voter’s signature envelope. The court of appeals’ message to ballot-board members is: ignore obvious evidence that “the voter” didn’t sign the signature envelope. That turns the statute on its head and means that “unsatisfied” ballot-board members are forced to accept ballots against their better judgment.

In short, “satisfied” means persuaded by evidence, and the statute does not prohibit ballot-board members from considering the evidence available to them to arrive at that destination.

## 2. “The voter signed.”

Ballot-board members must also be “satisfied” that “*the voter*” signed the signature envelope. The Secretary will argue that this Court should rewrite the express words of the statute such that subpart 2 of the rule only requires there to be “*a* signature” on the envelope, or that “*a* voter signed” the envelope, and therefore ballot-board members must be strictly limited in their consideration—because they are not to be trusted, after all.

The Secretary’s version of statutory interpretation will be that the law *should be* what the Secretary *wishes* it were. This attempt to rewrite the statute is impermissible. *Energy Pol’y Advocates v. Ellison*, No. A20-1344, 2022 Minn. LEXIS 402, at \*23 (Sep. 28, 2022) (“when the statute says all Attorney General data in [Minn. Stat. § 13.65,] subdivision 1 ‘are private data on individuals,’ the data are private data on individuals”).

The use of the definite article “*the*” to modify “voter” in Section 203B.121 directs ballot-board members to be satisfied that a *specific* voter signed the envelope. *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012) (“The definite article ‘the’ is a word of limitation that indicates a reference to a specific object.”) (citing *Clark v. Ritchie*, 787 N.W.2d 142, 149 (Minn. 2010)). In other words, the ballot-board members must be “satisfied” that *the person who has the legal right to submit the ballot* is the one who signed the signature envelope.

It is axiomatic that the best evidence of whether “the voter signed” the certification is if “the voter’s” signature on that document matches “the voter’s” signature on another document available to the ballot board. The best way to arrive at that conclusion is by matching the absentee ballot application to the signature envelope.

The court of appeals brushed aside this Court’s precedent on the legislature’s use of the definite article, “the,” as opposed to “a,” in the opinion below, calling it mere “semantical argument.” Add. 7 n.4; *contra Hohenwald*, 815 NW.2d at 830. It is not—it is statutory interpretation. The court of appeals relied on reading the provisions of Minn. Stat. § 203B.121, subdivision 2(b) together in context to arrive at its conclusion that subdivision 2(b)(2) does not “**authorize**[] or require[] signature matching when there is not an identification-number discrepancy.” Add. 7 n.4 (emphasis added). But, to repeat, nothing in the statutory language forbids a signature match or instructs ballot-board members to ignore obvious evidence that somebody else may have returned a voter’s signature envelope.

The plain meaning of Minn. Stat. § 203B.121, subd. 2(b)(2) allows matching between the absentee ballot application and the signature envelope in determining whether “the voter signed” the signature envelope.

**B. Minnesota Rule 8210.2450, Subpart 2 Subverts the Plain Meaning of Minnesota Statutes Section 203B.121, Subdivision 2(b)(2).**

Most simply put, the rule forbids what the statute permits and should, therefore, be declared invalid. *See Minn. Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441, 447 (Minn. 2020) (“a conflict exists where the ordinance forbids what the statute *expressly* permits”) (emphasis in original). The statute requires a ballot-board member to determine whether “the voter signed” the signature envelope, with no restrictions as to what the ballot-board member might consider. On the contrary, the rule substantially restricts ballot-board members’ use of their training, wisdom, experience, and judgment; the rule even restricts a ballot-board member from using the likely best evidence available—signature matching—to determine whether the person who has the legal right to submit the ballot is the one who signed the signature envelope.

In particular, related to subdivision 2 and subpart 2, the rule forbids ballot-board members from considering whether signatures on a ballot application and signature envelope are different for any other reason than that the *name* in the signature is different from that printed on the signature envelope.<sup>11</sup> The rule thus sets aside a ballot-board member’s “satisfaction” and

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<sup>11</sup> *See supra* pp. 21-22 (quoting Minn. R. 8210.2450, subp. 2 & 3).

instead allows rejection because of the signature in one narrow circumstance.

In doing so, the rule jettisons the legislature’s reliance on the ballot-board members’ training, wisdom, experience, and judgment for their “satisfaction” that the statutory requisites have been met. In its place, the rule requires acceptance of a signature on a signature envelope which does not match its counterpart on a ballot application, as long as it uses the same *name* “as printed on the signature envelope”—a concept totally foreign to the statutory language. Thus, even a signature which would appear obviously forged if compared to the ballot application or voter record must be accepted as long as the forger got the name right.

The rule also requires acceptance of ballots with signature marks or another person’s signature on “either”<sup>12</sup> document, even if they don’t match, which means that anyone can sign for any voter for any reason, and ballot-board members must put away any questions that arise in their minds.<sup>13</sup> *Id.*

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<sup>12</sup> This express language in the rule admits that signature matching is inevitable, given the statutory language.

<sup>13</sup> Appellants expect the Secretary to argue that this provision is needed to comply with the federal Voting Rights Act. It is not. The statute does not prohibits a voter with a disability from having *a* third party sign a ballot for him or her. There is no automatic VRA preemption of statutes which simply ensure that voters are who they say they are. S. Rep. No. 97-417, at 62-63 (1982) (“The Committee recognizes the legitimate right of any State to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters.”). The rule, on the other hand, appears to allow *any voter* to use this practice, whether disabled or not, and

These provisions subvert the purpose of the statute and forbid what the statute expressly permits.

The court of appeals misinterpreted Appellants' argument below related to these provisions and attacked a straw man. To be clear, Appellants are *not* arguing that a ballot-board member cannot accept a ballot if a person uses a signature mark or signature-by-proxy pursuant to Minn. Stat. § 203B.07. *Contra* Add. 10 ("We therefore reject the argument that the rule's provision that 'another individual...[may] sign the voter's name in their presence on either or both the application and the signature envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14,' prevents a ballot board member from determining that the voter signed the certification."). If a person invoking these *rare* exceptions to the normal signature requirement uses these methods, ballot-board members should not reject ballots based on the use of these methods. The court of appeals' holding here attacked an enemy that did not exist.

Rather, given the undisputed requirement in subdivision 2(b)(3), discussed below, that where there is an identification-number mismatch, a signature match follows, it is inevitable that some of these signature envelopes will be compared to the ballot application. With that in mind, the problem

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two different assistants at the application stage and the signature envelope stage.

with the Secretary’s rule is that, by stating that there can be different signatures or marks on “either” document, it *forbids* a ballot-board member from rejecting a ballot where two clearly different people signed the signature envelope and application. This forbids what the statute permits, both under subdivision 2(b)(2) and 2(b)(3). Under both subdivisions, the legislature contemplated that a ballot-board member might review both documents and reject based on a discrepancy between the two.

Again, the statute is not designed to make the rare exception related to voters with a physical disability that prevents them from writing swallow the rule for all voters. The legislature would not have countenanced that this safeguard could be subject to an end-run—that anyone can sign for any voter for any reason, on both the absentee ballot application and the signature envelope. The rule conflicts with the statute and is invalid.

**IV. Minnesota Rule 8210.2450, Subpart 3 Conflicts with the Plain Meaning of Minnesota Statutes Section 203B.121, Subdivision 2(b)(3).**

As described above, the statutory scheme in Minn. Stat. § 203B.121, subdivision 2(b)(3) is not complicated, ambiguous, or discriminatory. It states, in relevant part, that an absentee ballot shall be accepted if:

a majority of the members of the ballot board examining the envelope are satisfied that:

....

(3) the voter’s Minnesota driver’s license, state identification

number, or the last four digits of the voter's Social Security number are the same as a number on the voter's absentee ballot application or voter record. If the number does not match, the election judges must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted.

This simple language provides a basic mechanism for election-judge ballot-board members "to determine whether" the person who applied for the absentee ballot was the same person who returned it. The 2008 U.S. Senate recount precipitated a change in the way Minnesota does absentee balloting, but the plain language of the statute shows that signature matching remains important to ensuring that voters are not disenfranchised of *their* vote—it would be deeply undemocratic to remove this safeguard against the most vulnerable having their vote taken from them.

By contrast, Minn. R. 8210.2450, subpart 3, prohibits election judges performing their duty under subdivision 2(b)(3) from rejecting a ballot under nearly every imaginable circumstance, even in the presence of obvious problems:

Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter's even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14.

Rule 8210.2450, subp. 2, 3. Because of the rule, election-judge ballot-board



members are prohibited from considering important evidence which could result in them not being “satisfied” by a returned signature envelope because their judgment has been supplanted by that of the Secretary of State. The rule prohibits rejection based on such obvious discrepancies as two different people making two different marks on the application and the envelope. This neuters the statute and is impossible to reconcile with it. The Court should declare the rule invalid.

**A. The Plain Text of Section 203B.121, Subdivision 2(b)(3) Demonstrates the Legislative Intent Behind It.**

“The objective of statutory interpretation is to ascertain and effectuate the legislature’s intent.” *Walgreens Specialty Pharmacy, LLC v. Comm’r of Revenue*, 916 N.W.2d 529, 533 (Minn. 2018) (internal quotation omitted). In Minn. Stat. § 203B.121, subdivision 2(b)(3), one need not look past the plain text of the statute to find that intent: where there is a mismatch between the identification number provided on the absentee ballot application and the signature envelope, “...the election judges must compare the signature provided by the applicant *to determine whether the ballots were returned by the same person to whom they were transmitted.*” (emphasis added). Thus, if the election judges examining the envelope are satisfied that there is either (1) a numerical match or (2) there is a numerical *mismatch* but, after comparison, the signature on the signature envelope appears to be the same as the one on the

application, the ballot is accepted. *Id.* If the signature envelope fails both tests, it must be marked “Rejected.” *Id.* subd. 2(c)(1).

The question, then, is how election-judge ballot-board members should “determine whether” the signatures match. The answer comes from the common understanding of the word “determine” and the text of the statute. In this context, “determine” is defined by Merriam-Webster as, “to settle or decide by choice of alternatives or possibilities.” “Determine,” *Merriam-Webster, available at* <https://www.merriam-webster.com/dictionary/determine>. Further, the statute directs election judges to gather the signature envelope and application<sup>14</sup> and compare the signatures. When comparing the two documents, election judges must determine whether there is a match based on their judgment, wisdom, training, and experience.

Notably, the legislature did *not* say that ballots with mismatched signatures should be accepted anyway under certain circumstances. Silence does not render a statute ambiguous unless the silence renders the statute susceptible to more than one reasonable interpretation. *In re Welfare of R.S.*, 805 N.W.2d 44, 51 (Minn. 2011) (citation omitted). Silence is also not an opportunity to write in words supposedly inadvertently not stated by the legislature. *Genin v.*

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<sup>14</sup> If there is an electronic ballot application with a mismatched identification number and no signature, there is nothing for the election judges to compare, and the ballot must be rejected. *See* Minn. Stat. § 203B.121, Subd. 2(b).

*1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001). It is improper to assume, as Respondents and the court of appeals did below, that the statutory directive may be whittled away based on improper “guidance,” Add. 12, just because the legislature did not include more specific language dissecting the particulars of a voter’s signature.

In short, if the number match fails, and the signatures do not indicate to an election judge that the person who applied for the ballot is the person who returned it, the ballot must be rejected.<sup>15</sup> The election judge must rely on his or her training, wisdom, experience, and judgment to arrive at this conclusion.

**B. The Rule Subverts the Primary Purpose Behind the Statute.**

The primary purpose behind Minn. Stat. § 203B.121, subdivision 2(b)(3) cannot possibly be achieved in light of Rule 8210.2450, subpart 3, and therefore the Rule must be declared invalid. *E.g.*, *Green*, 389 N.W.2d at 506. “To the extent that such rules attempt to change substantive and mandatory portions of a statute, they are a nullity.” *Bielke v. Am. Crystal Sugar Co.*, 288 N.W. 584, 586 (Minn. 1939).

Again, as noted above, the primary purpose behind subdivision 2(b)(3) is

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<sup>15</sup> It bears noting, at this point, that rejection immediately leads to notification to the person who was *supposed to* return the ballot that they need to fix their error. Minn. Stat. § 203B.121, subd. 2(c)(2)-(3). This is a common-sense safeguard against even a theoretically improper rejection.

“to determine whether the ballots were returned by the same person to whom they were transmitted.” It therefore assumes that some ballots may be rejected because of a signature mismatch. It is a basic election-integrity fail-safe that first requires an identification-number match, but if there is a number mismatch, election judges may still accept the ballot if they are satisfied that the signatures on the two documents appear to be from the person who asked for and returned the ballot.

The second paragraph of subpart 3, however, violates the plain language of the law in multiple respects. The first sentence of the second paragraph assigns signature matching to “ballot board members.” This conflicts with the Court’s March 16, 2022 decision, wherein only “election judges” may conduct the signature match described in subdivision 2(b)(3). *Minn. Voters All.*, 971 N.W.2d at 280. Election judges, not ballot-board members who might be deputy county auditors or deputy city clerks, are therefore responsible for all accepting and rejecting of ballots which must be analyzed under this subsection of the law, as they would be the only “members of the ballot board...examin[ing] each signature envelope” subject to this subsection. *Id.*

Further, the remainder of the second paragraph of subpart 3 takes away election judges’ ability to use their training, experience, wisdom, and judgment to determine whether the signatures “match,” contrary to plain legislative intent. These prohibitions forbid rejection even where signatures on each

document are clearly different.<sup>16</sup> They remove from the election judges any discretion to make an informed decision and instead require judges to turn a blind eye to relevant information and make an *intentionally uninformed* decision. The rule even allows, on its face and in practice, *any* voter to use the exceptions to a signature requirement for disabled voters or those unable to write imported from Minn. Stat. § 645.44. The rule’s exceptions swallow the statute’s integrity-focused purpose.

As discussed above, given the statutory allowance for election judges to “determine whether” the applicant and the voter are the same person, an appropriate rule would provide guidance to implement the statute, not forbid what the statute permits. An appropriate rule might *suggest* that similar but not identical signatures should be accepted. It might *suggest* an example of this. It might *inform* judges that using a signature mark on *both* documents is a legitimate signature for certain voters. And it might *inform* judges that a signature-by-proxy is acceptable for disabled voters given federal and state law requirements outside the Minnesota Election Law. But it may not forbid what the statute permits, which it has done. Thus, the rule should be declared invalid.

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<sup>16</sup> See *supra* pp. 21-22 (quoting Minn. R. 8210.2450, subp. 2 & 3).

**C. The Rule Renders Meaningless the Training, Wisdom, Judgment, and Experience Required of Election Judges Under Minnesota Statutes Section 203B.121, Subdivision 2(b)(3).**

Minnesotans rely on the judgment of lay people every day in critically important spheres, including criminal juries who decide whether to deprive the accused of their liberty. Likewise, section 203B.121 entrusts citizen election judges with a duty to ensure that valid ballots are accepted and invalid ballots are rejected. The legislature left these issues to party-balanced election judges, not the Secretary of State. Granted, it is likely that very few, if any, election judges on Minnesota ballot boards are handwriting or signature evaluation experts. But neither is the Secretary of State.

Nevertheless, under the guise of “guidance,” Minnesota Rule 8210.2450 eviscerates the purpose of the statute by removing the discretion vested in election judges in subdivision 2(b)(3). The court of appeals failed to address this important issue in its opinion, relegating it to two sentences on the last page:

Petitioners also suggest that limitations in subpart 3 on review of voter signatures prohibit election judges from making an informed decision based on their training and expertise that the signature envelope meets statutory requirements. See Minn. Stat. § 203B.121, subd. 2(b). For the reasons discussed above related to limitations in subpart 2, we are not persuaded.

It is not clear which “limitations in subpart 2” the lower court refers to, but Appellants find no answer to this question in the opinion, despite it being at the heart of subdivision 2(b)(3)’s conflict with subpart 3 of the rule.

**D. The Legislature Required Party Balance and Majority Opinions Among Election Judges on Absentee Ballot Boards Because It Anticipated Partisanship and Bias.**

If the judgment of the Secretary of State were meant to be a substitute for the judgment of election judges on the ballot board, section 203B.121 would have reflected this. It does not. Instead, in democratic fashion, the statute's context demonstrates that the legislature intended to entrust disparate election judges, balanced by party, with discretion, and required *them*—not the Secretary of State—to come to a consensus that a ballot should be accepted.

“[I]t is sometimes necessary to analyze [a] provision in the context of surrounding sections.... Sometimes the operation of a statutory provision ‘only becomes clear when it is read in conjunction with the rest of the legislative act of which it is a part.’ *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398, 402 (Minn. 2019) (internal quotation and citation omitted). The context of the statute here shows that election judges were meant to evaluate signatures in a county-level adversarial setting and without a thumb on the scale from a partisan state executive like the Secretary.

First, section 203B.121, subdivision 2(a) requires that “[e]lection judges performing the duties in this section must be of different major political parties[.]” The only conceivable reason to include this requirement is because election judges have personal political leanings. After all, the qualifications to be an election judge include the requirements laid out in Minn. Stat. § 204B.21,

which also extensively discusses the lists to be furnished by the major political parties in subdivision 1.

Second, the ballot board statute itself mandates “...adequate training on the processing and counting of absentee ballots, including but not limited to instruction on accepting and rejecting absentee ballots” for all ballot-board members, including election judges. *Id.*, subd. 1(a). This training equips election judges with the understanding of their task and can guide them as to how to complete it. But the law leaves the judgment calls during election season to the individuals. It makes no sense that election-judge ballot-board members would undergo special training and be singularly responsible for the signature comparison required in subdivision 2(b)(3), if their duty were limited to a rigid application of the Secretary’s rule.

Third, the qualifications to be an election judge under Minn. Stat. § 204B.19 include that election judges be able to read and write the English language and allow for the governing body “to establish additional qualifications” to ensure effective performance of job duties. Minn. Stat. § 204B.19, subd. 2, 4. These requirements would be superfluous if the Secretary’s pre-judgment were to supplant election judges’ in-the-moment consideration of the signatures before them during the work of the absentee ballot board.

Again, the legislature did not give the Secretary *carte blanche* to insert his discretion in place of election judges, or even local officials. There is no



reason to suspect that the legislature failed to take individual bias and partisanship into account when drafting the ballot-board statute. Party balance was created by the legislature precisely because individual opinions of election judges are a *part of the process* as applied to signature matching. This is a feature, not a bug. Removal of election judges' ability to use their own training, wisdom, judgment, and experience in favor of the Secretary's in Rule 8210.2450 destroys this carefully crafted language

**E. Section 203B.121, Subdivision 2(b)(3) Does Not Affect Disabled Voters Any Differently Than Those Who Do Not Require Assistance in the Absentee Voting Process.**

Signature matching has coexisted with the federal Voting Rights Act for decades, and it is a simple and effective means of accurately determining whether absentee ballots have been returned by those who applied for them, related to which the State of Minnesota has a compelling interest. *See, e.g., In re DSCC*, 950 N.W.2d 280, 293 (Minn. 2020) (“the State has a compelling interest in orderly elections and procedures that preserve the integrity of the election process”). Further, even if a security-related restriction, like a signature match, may theoretically affect some voters, a hypothetical-yet-unproven effect does not establish that signature matching would “deter anyone from voting.” *See id.* at 293 (citing *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951-52 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008)).

Respondent will likely argue that subdivision 2(b)(3), as Appellants

interpret it, somehow discriminates against those with motor disabilities so severe as to require the assistance of others in marking ballots. Not so. To date, there has not been a scintilla of evidence that a single voter requiring special assistance in signing an absentee ballot application or a ballot envelope has ever been disenfranchised in any way by the black-letter requirements of Minn. Stat. § 203B.121. In fact, both the plain language and logical effect of subdivision 2(b)(3) provide disabled voters the same opportunity to vote absentee as those who do not need special assistance when casting an absentee ballot.

Important again, section 203B.121 is not written with the primary purpose of ensuring that *every single ballot* is counted *regardless of irregularities or inability to verify identity*. It is designed to provide a basic check to ensure integrity in the process; a basis to reject some ballots if procedural safeguards are not met. *E.g., Hearing on H.F. 3111* at 39:28 (statement of Rep. Kiffmeyer) (the purpose of the new law was accuracy, related both to preventing “wrongly rejected” and “wrongly accepted” ballots, and that the law addressed “both”). But so long as the criteria for acceptance are met under subdivision 2, the ballot will be accepted.

Respondent will likely attempt to create a hypothetical scenario in which a disabled voter could engage in conduct that results in different signatures that run afoul of subdivision 2(b)(3)’s text. But *any* voter is capable of engaging in conduct that would result in ballot rejection in the event of mismatched

identification numbers and signatures under the statute. This argument is no different from questioning the legality of a criminal statute because an innocent person could exhibit some behavior that could ensnare him under certain hypothetical, unrealized circumstances. This has never been the test for the facial legality of a statute, much less for the conflict between a statute and an administrative rule, and it is not the test here.

The Minnesota Election Law allows a third-party to help voters who need help marking their ballots. *E.g.*, Minn. Stat. § 203B.07, subd. 3 (certification allowing for a voter to have “directed another individual to mark” a ballot if “physically unable to mark” it). Further, Minn. Stat. § 645.44, subdivision 14 provides that a person’s “signature” may be “(i) the person’s mark or name written by another at the request and in the presence of the person, or (ii) by a rubber stamp facsimile of the person’s actual signature, mark, or a signature of the person’s name or a mark made by another and adopted for all purposes of signature by the person with a motor disability and affixed in the person’s presence.”

Voters with a disability are unquestionably able to comply with the requirements under section 203B.121. First, in Appellants’ view, if the *same person* provides marking assistance to the voter on both the absentee ballot application and the ballot envelope, the two signatures or marks being examined by election judges or ballot-board members under subdivision 2 would match and

would be the “signature” of “the voter.” Thus, the ballot would be accepted. Section 645.44 provides that the mark made by another person must be “...adopted for all purposes of signature by the person with a motor disability and affixed in the person’s presence.” *Id.* So, the mark *is* the signature of the disabled voter, despite being made by another person.

What section 203B.121, subdivision 2(b)(3) does *not* allow is for any voter to return a signature envelope with a different signature than the ballot application. If that happens, there is no match, and the ballot must be rejected, and a new one issued. Minn. Stat. § 203B.121, subd. 2(b)(3), 2(c). Election-judge ballot-board members faced with a mismatched identification number must match signatures for *every* voter. Like every other voter, voters with a motor disability must use their identification number to demonstrate that they are the same person to whom a ballot was transmitted. If they use the wrong identification number, and there is no evidence in the voter record to confirm the person’s identity, the only fallback to save the ballot is via a signature match. Like every other voter, voters with a motor disability must return signature envelopes with the same signature as the ballot application. Nothing in the statute’s plain language amounts to disenfranchisement of any voters in the absence of the “guidance” provided by Rule 8210.2450, nor will Respondent provide any good evidence of it.

**V. The Purpose of Minn. Stat. § 203B.121 and Its Legislative History Support Appellants’ Plain-Meaning Interpretation.**

The available legislative history for Minn. Stat. § 203B.121 and the occasion and necessity for the law support Appellants’ plain-meaning interpretation of the statute and further demonstrate that it conflicts with the rule. Minn. Stat. § 203B.121 removed the *focus* on the “genuineness” of the voter’s signature from the prior section 203B.12, but it maintained the *requirement* that ballot-board members determine that “*the voter* signed” the signature envelope, and it added to that an identification number matching requirement.

**A. A Comparison of the Former Text of Minnesota Statutes, Section 203B.12 Supports the Availability of Signature Review in Minnesota Statutes, Section 203B.121, Subdivision 2(b)(2).**

If the Court does consider legislative history, it should start with the former and current texts, which do not rely on subjective debate to determine the meaning of text. In 2010, Section 203B.121 *added* an identification number matching requirement to ballot-board members’ duties. It altered, but *did not remove*, any of the duties faced by election judges in the former Section 203B.12. A comparison of these provisions supports this.

Section 203B.12, Subd. 2 (2009) provided as follows, in relevant part:

The election judges shall mark the return envelope “Accepted” and initial or sign the return envelope below the word “Accepted” if the election judges or a majority of them are satisfied that:

- (1) the voter’s name and address on the return envelope are

the same as the information provided on the absentee ballot application;

(2) the voter's signature on the return envelope is the genuine signature of the individual who made the application for ballots....

Minn. Stat. § 203B.12, Subd. 2 (2009), available at <https://www.revisor.mn.gov/statutes/2009/cite/203B.12>.

As the current statute shows, the identification-number match is new, but the language “the genuine signature of the [voter]” is changed to “the voter signed the certification on the envelope.” *Compare id. with* Minn. Stat. § 203B.121, subd. 2(b)(2). Thus, the requirement of determining “genuineness” is out, but a common-sense check that “the voter signed” is in. For both statutes, the legislature used the term “satisfied” to indicate that ballot-board members and election judges must use their training, experience, wisdom, and judgment to analyze signature envelopes. And as described above, among the best evidence (though likely not the only evidence) to determine whether “the voter signed” the certification is a comparison of the signature on the signature envelope with the application for a ballot.

### **B. The Available Legislative Testimony Largely Supports Appellants' Interpretation.**

It is indisputable that the purpose of Minn. Stat. § 203B.121 was to create uniform absentee ballot boards at the city or county level across the state, with ballot-board members, and sometimes only election judges within that ballot board, accepting and rejecting absentee ballots. *Minn. Voters All.*, 971

N.W.2d at 280; *Hearing on H.F. 3111* at 34:00 (statement of Rep. Winkler);<sup>17</sup> *House Floor Session on H.F. 3111* at 48:00 (statement of Rep. Winkler);<sup>18</sup> *Senate Floor Debate on S.F. 2622* (Sen. Sieben).<sup>19</sup>

In addition, as shown above, legislative testimony shows that the law **added** an identification-number matching prong which, if the numbers match, provides assurance to ballot-board members or election judges that the ballot was actually cast by the voter. On the House floor, Rep. Winkler described the bill as follows: “it changes the process for matching absentee ballot applications with the ballots that are returned, **enhancing** the signature match with a number match system.” *House Floor Session on H.F. 3111* at 48:00 (statement of Rep. Winkler) (emphasis added).<sup>20</sup>

As noted in the facts above, it is true that Senator Sieben stated in the Senate floor debate that the identification number prong would be used “instead of” a signature match, and Representative Winkler also did say in his earlier committee statement that “we are moving to” a number-matching

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<sup>17</sup> Available at <https://www.house.leg.state.mn.us/hjvid/86/502>.

<sup>18</sup> Available at [https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00\\_Main\\_video](https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00_Main_video).

<sup>19</sup> Available at <https://www.lrl.mn.gov/media/file?mtgid=860890>.

<sup>20</sup> Available at [https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00\\_Main\\_video](https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00_Main_video).

system.<sup>21</sup> But these statements are clearly refuted by the law’s text, which indisputably requires a signature match in subdivision 2(b)(3), and does not eliminate it as evidence related to 2(b)(2). Given Rep. Winkler’s later testimony on the House floor, the most sensible reading of his earlier statement would be that the new number-matching system would become an enhancement, not a replacement, of the voter-verification requirement. Also important is that, in committee with Representative Winkler, former Secretary of State Mary Kiffmeyer noted that the purpose of the new law was accuracy, related both to preventing “wrongly rejected” and “wrongly accepted” ballots, and that the law addressed “both.”

If the Court looks at legislative history to determine the meaning of Minn. Stat. § 203B.121, subd. 2, the prior language of Minn. Stat. § 203B.12, the language of 2010 Minnesota Laws chapter 194, section 9, and the statement of Rep. Winkler on the House floor as he was convincing the entire House to vote for the bill in the face of several proposed amendments, all militate in favor of Appellants’ interpretation of the law.

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<sup>21</sup> Like the Secretary’s 2010 interpretation of the law, *see* note 8, *supra*, Rep. Winkler’s 2010 statements on this law in another context—that the processing would all be done by election judges—has been rejected by this Court just this year, casting some doubt on the value of any of the testimony about this bill. *See supra* Statement of the Case, section V.



## CONCLUSION

Minnesota's absentee ballot-board members and election judges are entrusted with a significant duty to ensure the accurate processing of absentee ballots in Minnesota. In the 2020 election, 1.9 million out of the state's 3.3 million ballots cast—58%—were cast absentee. Absentee voting's popularity increased from the 2018 midterms to the 2022 midterms. It is essential that the legislature and Secretary provide those entrusted with accepting and rejecting absentee ballots a clear directive as to how they must determine whether to accept or reject received ballots. Minn. R. 8210.2450 fails that test because it conflicts with Minn. Stat. § 203B.121. The Court should declare the rule invalid.

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## **CERTIFICATE OF DOCUMENT LENGTH**

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